



VIRGINIA

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Virginia Code Commission

<http://register.dls.virginia.gov>

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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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

October 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 (Monday)	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 (Monday)	January 4, 2021
37:11	December 28, 2020 (Monday)	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: **18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.**

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

Name of Petitioner: James Christmas.

Nature of Petitioner's Request: To amend 18VAC115-60-50 to allow persons who are licensed as clinical social workers to be licensed as substance abuse treatment practitioners without examination.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on August 21, 2020, the board declined to take action on the petition. The board concurred with the commenters who noted that licensure as a substance abuse treatment practitioner requires specialized education, experience, and examination. In its proposed amendments adopted pursuant to a periodic review of 18VAC115-60, the board has already deleted the existing exemption from examination for licensed professional counselors.

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

VA.R. Doc. No. R20-36; Filed August 21, 2020, 4:46 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Housing and Community Development conducted a periodic review and a small business impact review of **13VAC5-21, Virginia Certification Standards**, and determined that this regulation should be amended to achieve consistency with new industry standards.

The proposed regulatory action to amend 13VAC5-21, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Housing and Community Development conducted a periodic review and a small business impact review of **13VAC5-95, Virginia Manufactured Home Safety Regulations**, and determined that this regulation should be amended to achieve consistency with new industry standards.

The proposed regulatory action to amend 13VAC5-95, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-26, Regulations for Nurse Aide Education Programs**, and

determined that this regulation should be amended to clarify and update the regulation.

The proposed regulatory action to amend 18VAC90-26, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

BOARD OF COUNSELING

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling conducted a periodic review and a small business impact review of **18VAC115-40, Regulations Governing the Certification of Rehabilitation Providers**, and determined that this regulation should be amended for consistency with other professions certified by the board.

The proposed regulatory action to amend 18VAC115-40, which is published in this issue of the Virginia Register, serves as the report of findings.

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

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services conducted a periodic review and a small business impact review of **22VAC30-110, Assessment in Assisted Living Facilities**, and determined that this regulation should be amended to update and clarify the regulation.

The proposed regulatory action to amend 22VAC30-110, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Paige McCleary, Adult Services and Adult Protective Service Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Virginia Soil and Water Conservation Board has WITHDRAWN the Notice of Intended Regulatory Action for **4VAC50-20, Impounding Structure Regulations**, which was published in **36:8 VA.R. 1025 December 9, 2019**. The board is currently evaluating the issues contained in the Notice of Intended Regulatory Action to ensure that a regulatory action is the most suitable process to address them.

Statutory Authority: § 10.1-604 of the Code of Virginia.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

VA.R. Doc. No. R20-6047; Filed August 14, 2020, 2:29 p.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Council of Higher Education for Virginia intends to consider amending **8VAC40-31, Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates**. The purpose of the proposed action is to increase the nonrefundable fees to cover the essential functions of and services provided by the Private Postsecondary Education (PPE) unit of the Academic Affairs division of the State Council of Higher Education for Virginia (SCHEV). The PPE unit is responsible for regulating private and out-of-state postsecondary educational institutions operating in Virginia. The PPE unit currently regulates 126 degree-granting institutions and 165 career-technical schools at more than 300 locations throughout Virginia. Staff responsibilities include approval of new postsecondary schools, program approvals, compliance audits, granting exemptions, agent approvals, and annual recertification of postsecondary schools. SCHEV does not receive general funds to perform the duties delegated to the PPE unit by the Code of Virginia and regulation; all salaries, benefits, and

expenditures are paid out of the fees collected from regulated institutions.

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

Statutory Authority: § 23.1-215 of the Code of Virginia.

Public Comment Deadline: October 14, 2020.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14 Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-0571, FAX (804) 225-2604, or email beverlyrebar@schev.edu.

VA.R. Doc. No. R21-6185; Filed August 17, 2020, 10:34 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider promulgating **12VAC5-403, Certification of Doulas**. The purpose of the proposed action is to establish the requirements for (i) use of the title "state-certified doula" and (ii) training and education requirements necessary for certification by the Department of Health as a state-certified doula. The minimum training and education requirements will be based on the core competences for doula certification used by national organizations and community based organizations in Virginia. The proposed action implements the mandate in § 32.1-77.1 of the Code of Virginia enacted by Chapter 724 of the 2020 Acts of Assembly.

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

Statutory Authority: §§ 32.1-12 and 32.1-77.1 of the Code of Virginia.

Public Comment Deadline: October 14, 2020.

Agency Contact: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 863-7253, or email robin.buskey@vdh.virginia.gov.

VA.R. Doc. No. R21-6484; Filed August 12, 2020, 1:20 p.m.

Notices of Intended Regulatory Action

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

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 Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to incorporate into regulations certain allowances that have been approved for implementation by pilot programs in several hospital systems. In 18VAC110-60-425, proposed amendments for robotic pharmacy systems will allow for medication carousels used in a hospital to store and guide the selection of drugs to be dispensed or removed from the pharmacy and establish certain safeguards, including a verification check by a pharmacist for the accuracy of the barcode assignment to an individual drug. Under specified conditions, a pharmacist will not be required to check the accuracy of a patient-specific drug removed from a carousel or the accuracy of a drug removed by a pharmacy technician to be placed into an automated drug dispensing system. A new section (18VAC110-20 505) will be added to incorporate another technology already approved for innovative pilot programs – the use of radio-frequency identification (RFID) to verify the accuracy of drugs placed into a kit for licensed emergency medical services personnel or other kits used as floor stock throughout a hospital. The proposal will specify the responsibilities of a pharmacist and the duties of a pharmacy technician in the use of RFID technology. The intent is utilization of newer technologies that facilitate the ability of pharmacists to focus on patient-centered care and reduce the possibility of medication errors.

The Board of Pharmacy is publishing the preliminary draft text with this notice to provide affected parties an opportunity to recommend any less burdensome or intrusive alternatives that would be consistent with the board's statutory responsibility to protect the safety and integrity of drugs in the Commonwealth.

Preliminary Draft Text:

18VAC110-20-425. Robotic pharmacy systems.

A. Consistent with 18VAC110-20-420, a pharmacy providing services to a hospital or a long-term care facility and operating a robotic pharmacy system that dispenses drugs in barcoded unit dose or compliance packaging is exempted from 18VAC110-20-270 C, provided the accuracy of the final dispensed prescription product complies with a written quality assurance plan and requirements of this chapter. The following requirements for operation of a robotic pharmacy system shall apply:

1. Pharmacists shall review for accuracy and appropriateness of therapy all data entry of prescription orders into the computer operating the system.
2. The packaging, repackaging, stocking, and restocking of the robotic pharmacy system shall be performed by pharmacy technicians or pharmacists.
3. Pharmacists shall verify and check for the accuracy of all drugs packaged or repackaged for use by the robot by a visual check of both labeling and contents prior to stocking the drugs in the robotic pharmacy system. A repackaging record shall be maintained in accordance with 18VAC110-20-355 A, and the verifying pharmacist shall initial the record. Packaging and labeling, including the appropriate beyond-use date, shall conform to requirements of this chapter and current USP-NF standards.
4. A written policy and procedure must be maintained and complied with and shall include at a minimum procedures for ensuring:
 - a. Accurate packaging and repackaging of all drugs for use in the robotic pharmacy system, to include properly labeled barcodes, and method for ensuring pharmacist verification of all packaged and repacked drugs compliant with this chapter and assigned barcodes;
 - b. Accurate stocking and restocking of the robotic pharmacy system;
 - c. Removing expired drugs;
 - d. Proper handling of drugs that may be dropped by the robotic pharmacy system;
 - e. Performing routine maintenance of robotic pharmacy system as indicated by manufacturer's schedules and recommendations;
 - f. Accurate dispensing of drugs via robotic pharmacy system for cart fills, first doses, and cart fill updates during normal operation and during any scheduled or unscheduled downtime;
 - g. Accurate recording of any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution;
 - h. Appropriately performing an analysis to investigate, identify, and correct sources of discrepancies or errors associated with the robotic pharmacy system; and
 - i. Maintaining quality assurance reports.
5. All manual picks shall be checked by pharmacists.
6. If it is identified that the robot selected an incorrect medication, the pharmacy shall identify and correct the source of discrepancy or error in compliance with the pharmacy's policies and procedures prior to resuming full operations of the robot. An investigation of the cause of the

Notices of Intended Regulatory Action

event shall be completed, and the outcome of the corrective action plan shall be summarized and documented in a readily retrievable format.

7. Quarterly quality assurance reports demonstrating the accuracy of the robot shall be maintained. At a minimum, these reports shall include a summary indicating the date and description of all discrepancies that include discrepancies involving the packaging, repackaging, and dispensing of drugs via the robotic pharmacy system found during that quarter plus a cumulative summary since initiation of the robotic pharmacy system.

8. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

B. Intravenous admixture robotics may be utilized to compound drugs in compliance with § 54.1-3410.2 of the Code of Virginia and 18VAC110-20-321; however, a pharmacist shall verify the accuracy of all compounded drugs pursuant to 18VAVC110-20-270 B.

C. Medication carousels that are a component of a robotic pharmacy system in a hospital may be utilized to store and guide the selection of drugs to be dispensed or removed from the pharmacy under the following conditions:

1. The entry of drug information into the barcode database for assignment of a barcode to an individual drug shall be performed by a pharmacist who shall verify the accuracy of the barcode assignment.

2. A pharmacist is not required to verify the accuracy of a patient-specific drug removed from a medication carousel if:

a. The entry of the order for a patient-specific drug into the pharmacy's dispensing software is verified by a pharmacist for accuracy and is electronically transmitted to the medication carousel; and

b. The patient-specific drug removed from the medication carousel by a pharmacy technician is verified for accuracy by the pharmacy technician who shall scan each drug unit, each intact blister card of each unit dose drug, or each unopened manufacturer's container of each unit dose drug removed from the medication carousel prior to dispensing. A nurse or other person authorized to administer drug scans each drug unit using barcode technology to verify the accuracy of the drug prior to administration of the drug to the patient.

3. A pharmacist is not required to verify the accuracy of drug removed from the medication carousel by a pharmacy

technician that is intended to be placed into an automated drug dispensing system as defined in § 54.1-3401 of the Code of Virginia if:

a. The list of drugs to be removed from the medication carousel for loading or replenishing an individual automated dispensing system is electronically transmitted to the medication carousel; and

b. The drug removed from the medication carousel is verified for accuracy by the pharmacy technician by scanning each drug unit, each intact blister card of each unit dose drug, or each unopened manufacturer's container of each unit dose drug removed from the medication carousel prior to leaving the pharmacy and delivering the drug to the automated drug dispensing system. A nurse or other person authorized to administer drug scans each drug unit using barcode technology to verify the accuracy of the drug prior to administration of the drug to the patient. If the drug is placed into an automated drug dispensing system wherein a nurse or other person authorized to administer drug will not be able to scan each drug unit using barcode technology to verify the accuracy of the drug prior to patient administration, then a second verification for accuracy shall be performed by a pharmacy technician by scanning each drug unit, each intact blister card of each unit dose drug, or each unopened manufacturer's container of each unit dose drug at the time of placing the drugs into the automated dispensing system.

4. A pharmacist shall verify the accuracy of all drugs prior to dispensing or leaving the pharmacy that are manually removed from the medication carousel by a pharmacy technician without the use of the robotic pharmacy system to guide the selection of the drug product.

18VAC110-20-500. Licensed emergency medical services (EMS) agencies program.

A. The pharmacy may prepare a kit for a licensed EMS agency provided:

1. The PIC of the hospital pharmacy shall be responsible for all prescription drugs and Schedule VI controlled devices contained in this kit. ~~A~~ Except as authorized in 18VAC110-20-505, a pharmacist shall check each kit after filling and initial the filling record certifying the accuracy and integrity of the contents of the kit.

2. The kit is sealed, secured, and stored in such a manner that it will deter theft or loss of drugs and devices and aid in detection of theft or loss.

a. The hospital pharmacy shall have a method of sealing the kits such that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or

Notices of Intended Regulatory Action

resealing. The pharmacy shall maintain a record of the seal identifiers when placed on a kit and maintain the record for a period of one year.

c. In lieu of a seal, a kit with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy may be used.

3. Drugs and devices may be administered by an EMS provider upon an oral or written order or standing protocol of an authorized medical practitioner in accordance with § 54.1-3408 of the Code of Virginia. Oral orders shall be reduced to writing by the EMS provider and shall be signed by a medical practitioner. Written standing protocols shall be signed by the operational medical director for the EMS agency. A current copy of the signed standing protocol shall be maintained by the pharmacy participating in the kit exchange. The EMS provider shall make a record of all drugs and devices administered to a patient.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. The record of the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year. A pharmacist, pharmacy technician, or nurse shall reconcile the Schedule II, III, IV, or V drugs in the kit at the time the opened kit is returned. A record of the reconciliation, to include any noted discrepancies, shall be maintained by the pharmacy for a period of two years from the time of exchange. The theft or any other unusual loss of any Schedule II, III, IV, or V controlled substance shall be reported in accordance with § 54.1-3404 of the Code of Virginia.

5. Accurate records of the following shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year:

a. The record of filling and verifying the kit to include the drug contents of the kit, the initials of the pharmacist verifying the contents, the date of verification, a record of an identifier if a seal is used, and the assigned expiration date for the kit, which shall be no later than the expiration date associated with the first drug or device scheduled to expire.

b. The record of the exchange of the kit to include the date of exchange and the name of EMS agency and EMS provider receiving the kit.

6. Destruction of partially used Schedules II, III, IV, and V drugs shall be accomplished by two persons, one of whom shall be the EMS provider and the other shall be a pharmacist, nurse, prescriber, pharmacy technician, or a second EMS provider. Documentation shall be maintained in the pharmacy for a period of two years from the date of destruction.

7. The record of the drugs and devices administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations for a period of not less than two years.

8. Intravenous and irrigation solutions provided by a hospital pharmacy to an emergency medical services agency may be stored separately outside the kit.

9. Any drug or device showing evidence of damage or tampering shall be immediately removed from the kit and replaced.

10. In lieu of exchange by the hospital pharmacy, the PIC of the hospital pharmacy may authorize the exchange of the kit by the emergency department. Exchange of the kit in the emergency department shall only be performed by a pharmacist, nurse, or prescriber if the kit contents include Schedule II, III, IV, or V drugs.

B. A licensed EMS agency may obtain a controlled substances registration pursuant to § 54.1-3423 D of the Code of Virginia for the purpose of performing a one-to-one exchange of Schedule VI drugs or devices.

1. The controlled substances registration may be issued to a single agency or to multiple agencies within a single jurisdiction.

2. The controlled substances registration issued solely for this intended purpose does not authorize the storage of drugs within the agency facility.

3. Pursuant to § 54.1-3434.02 of the Code of Virginia, the EMS provider may directly obtain Schedule VI drugs and devices from an automated drug dispensing device.

4. If such drugs or devices are obtained from a nurse, pharmacist, or prescriber, it shall be in accordance with the procedures established by the pharmacist-in-charge, which shall include a requirement to record the date of exchange, name of licensed person providing drug or device, name of the EMS agency and provider receiving the drug or device, and assigned expiration date. Such record shall be maintained by the pharmacy for one year from the date of exchange.

5. If an EMS agency is performing a one-to-one exchange of Schedule VI drugs or devices, Schedule II, III, IV, or V drugs shall remain in a separate, sealed container and shall only be exchanged in accordance with provisions of subsection A of this section.

18VAC110-20-505. Use of radio-frequency identification.

A. A hospital pharmacy may use radio-frequency identification (RFID) to verify the accuracy of drugs placed into a kit for licensed emergency medical services pursuant to 18VAC110-20-500 or other kits used as floor stock throughout the hospital under the following conditions:

Notices of Intended Regulatory Action

1. A pharmacist shall be responsible for performing and verifying the accuracy of the following tasks:

a. The addition, modification, or deletion of drug information into the RFID database for assignment of a RFID tag to an individual drug; and

b. The development of the contents of the kit in the RFID database and the associated drug-specific RFID tags.

2. A pharmacy technician may place the RFID tag on the drugs, and a pharmacist shall verify that all drugs have been accurately tagged prior to storing the drugs in the pharmacy's inventory.

3. A pharmacy technician may remove RFID-tagged drugs from the pharmacy's inventory whose RFID tags have been previously verified for accuracy by a pharmacist, and place the drugs into the kit's container. A pharmacy technician may then place the container into the pharmacy's device that reads the RFID tags to verify if the correct drugs have been placed into the container as compared to the list of the kit's contents in the RFID database.

4. A pharmacist shall perform a daily random check for verification of the accuracy of 5.0% of all kits prepared that day utilizing the RFID technology. A manual or electronic record from which information can be readily retrieved, shall be maintained that includes:

a. The date of verification;

b. A description of all discrepancies identified, if any; and

c. The initials of pharmacist verifying the accuracy of the process.

5. Pharmacies engaged in RFID tagging of drugs shall be exempt from the requirements in subsection C of 18VAC110-20-490, subsection A of 18VAC110-20-460, and subsection A of 18VAC110-20-355.

6. All records required by this subsection shall be maintained for a period of one year from the date of verification by the pharmacist.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Comment Deadline: October 14, 2020.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R21-6271; Filed August 12, 2020, 2:09 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-20. Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law (amending 2VAC5-20-10 through 2VAC5-20-40).**

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

Effective Date: October 15, 2020.

Agency Contact: Kevin Schmidt, Director, Office of Policy, Planning, and Research, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1346, FAX (804) 371-7679, TTY (800) 828-1120, or email kevin.schmidt@vdacs.virginia.gov.

Summary:

In response to Chapter 504 of the 2018 Acts of Assembly, the amendments (i) clarify requirements by listing the specified activities associated with agriculture or horticulture that must occur on a property for it to qualify as "real estate devoted to agricultural use" or "real estate devoted to horticultural use"; (ii) require that the owner must certify to such; and (iii) eliminate the requirement that the land must have been devoted for at least five consecutive years previously to specified activities associated with agriculture or horticulture.

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.

2VAC5-20-10. Preamble Purpose.

The Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As as Devoted to Agricultural Use and to Horticultural Use Under under the Virginia Land Use Assessment Law to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products; and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.

3. Protect adequate and safe water supplies.
4. Preserve scenic natural beauties and open spaces.
5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease pressures ~~which~~ that force the conversion of real estate to more intensive uses.

The real estate must meet all of the ~~following~~ standards in this chapter to qualify for agricultural or for horticultural use.

2VAC5-20-20. Previous and current use, and exceptions Current use.

~~A. Previous use. The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:~~

- ~~1. Aquaculture~~
- ~~2. Forage crops~~
- ~~3. Commercial sod and seed~~
- ~~4. Grains and feed crops~~
- ~~5. Tobacco, cotton, and peanuts~~
- ~~6. Dairy animals and dairy products~~
- ~~7. Poultry and poultry products~~
- ~~8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals~~
- ~~9. Bees and apiary products~~
- ~~10. Commercial game animals or birds~~
- ~~11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, if less than 20 acres, and produced incidental to other farm operations~~
- ~~12. Fruits and nuts~~
- ~~13. Vegetables~~
- ~~14. Nursery products and floral products.~~

If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant.

B. Current use. The real estate sought to be qualified must currently be devoted to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to, the items in subsection A of this section; ~~except that no~~ A. The applicant shall certify that the real estate sought to be qualified currently meets one or more of the following requirements:

1. Be devoted to the bona fide production for sale of plants or animals that are useful to man;
2. Be devoted to the bona fide production for sale of products that are useful to man and that are made on the real estate from plants or animals produced on the real estate;
3. Be devoted to the bona fide production for sale of fruit of all kinds, including grapes, nuts, and berries;
4. Be devoted to the bona fide production for sale of vegetables;
5. Be devoted to the bona fide production for sale of nursery or floral products;
6. Be devoted to the bona fide production for sale of plants or products directly produced on such real estate from fruits, vegetables, nursery or floral products, or plants produced on such real estate; or
7. Be devoted to and meet the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with an agency of the state or federal government.

B. No real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres;
2. The real estate meets the technical standards prescribed by the State Forester; and
3. The real estate is producing tree or timber products incidental to other farm operations.

C. Exceptions.

~~1. Conversions by farm operator — nonqualifying real estate. If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use when the change expands or replaces production enterprises existing on~~

~~other tracts of real estate owned by the applicant, regardless of location.~~

~~2. Conversions by farm operator — qualifying real estate. If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use.~~

~~3. Government action. If a tract of real estate which has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.~~

~~4. Crops that require more than two years. The tract of real estate may qualify without the five-year history of agricultural or horticultural use if the tract of real estate is devoted to the production of any agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting, and the locality in which the tract of real estate is located has waived with respect to such real estate the five-year history of agricultural or horticultural use requirement.~~

2VAC5-20-30. Conservation of land resources; management and production.

A. Conservation of land resources. The applicant shall certify that the real estate is being used in a planned program of practices that:

1. With respect to real estate devoted to a use that disturbs the soil or that affects water quality, is intended to (in the case of soil) reduce or prevent soil erosion and (in the case of water) improve water quality by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices, to the extent that best management practices exist for that use of the real estate.
2. With respect to real estate devoted to crops grown in the soil, is intended to maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of such crops or as recommended by soil tests.
3. Is intended to control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

B. Management and production. The applicant shall certify that the real estate is being used in a planned program of management and production for sale of plants or animals (or plant or animal products useful to man), which include, but are not limited to, field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products; or that the real estate is

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~~being used for any other thing that is a qualifying use pursuant to 2VAC5-20-20 that corresponds with the demonstration of at least one of the requirements in 2VAC5-20-20 A 1 through A 6.~~

C. Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate ~~during the immediate three years previous~~, shall be equal to at least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry, and aquaculture products. Livestock, dairy, and poultry shall have a minimum of 12 animal unit-months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, 100 chickens, 66 turkeys, or 100 other fowl. (An animal unit-month means one mature cow or the equivalent on five acres of land for one month; therefore, 12 animal unit-months means the maintenance of one mature cow or the equivalent on each five acres for 12 months, or any combination of mature cows or the equivalent and months that would equal 12 animal unit-months, such as three mature cows or the equivalent for four months, four mature cows or the equivalent for three months, two mature cows or the equivalent for six months, etc.).

Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards, and small fruit products.

~~Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the Department of Forestry for forest areas and will be assessed at use value for forestry purposes.~~

2VAC5-20-40. Certification procedures.

A. Documentation. The commissioner of the revenue or the local assessing officer may require the applicant to document what the applicant must certify pursuant to 2VAC5-20-20 and 2VAC5-20-30. The commissioner of the revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A ~~Conservation Farm Management Plan~~ conservation farm management plan prepared by a professional; ~~or~~

4. ~~Gross sales averaging more than \$1,000 annually over the previous three years~~ Documentation demonstrating that the real estate sought to be qualified currently is devoted to the bona fide production for sale of one of the requirements in 2VAC5-20-20 A 1 through A 6; or

5. Documentation demonstrating that the real estate sought to be qualified currently is devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with a federal government or state government agency.

B. Interpretation of standards. In cases of uncertainty on the part of the commissioner of the revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commissioner of the revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia 23218, describing the use and situation, and requesting an opinion of whether the real estate qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:

- a. Owner's name and address.
- b. Operator's name and address.
- c. Total number of acres, acres in crops, acres in pastures, acres in a federal or state soil and water conservation programs (Farm Service Agency, Natural Resources Conservation Service, Virginia Department of Conservation and Recreation programs), program, and acres in forest.
- d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.
- e. A copy of the application for land use assessment taxation.
- f. ~~In any case involving a question about the applicability of the exception to the five-year history of agricultural or horticultural use requirement contained in 2VAC5-20-20 C 4 (relating to real estate devoted to the production of an agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting), a statement as to whether the locality has waived with respect to such real estate, the five-year history of agricultural or horticultural use requirement.~~

2. The commissioner may request additional information, if needed, directly from the applicant; ~~or he may~~ hold a

hearing at which the applicant and others may present additional information.

3. The commissioner will issue an opinion as soon as possible after all necessary information has been received.

VA.R. Doc. No. R19-5646; Filed August 13, 2020, 4:39 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-540. Pertaining to Spanish and King Mackerel (amending 4VAC20-540-30, 4VAC20-540-40, 4VAC20-540-50).**

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

Effective Date: September 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish a 500-pound daily per vessel bycatch provision in state waters for the Spanish mackerel commercial fishery to coincide with any federal waters closure announced by the National Marine Fisheries Service.

4VAC20-540-30. Possession Recreational possession limits established.

A. It shall be unlawful for any person fishing with ~~hook and line~~ hook-and-line, hand line, rod and reel, spear ~~or~~, gig, or other recreational gear to possess more than 15 Spanish mackerel or more than three king mackerel.

B. When fishing from a boat or vessel, where the entire catch is held in a common hold or container, the possession limits shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 15 for Spanish mackerel or multiplied by three for king mackerel. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~C. The possession limit provisions established in this section shall not apply to persons harvesting Spanish mackerel or king mackerel with licensed commercial gear.~~

4VAC20-540-40. Minimum size limits established.

A. Minimum size limit for Spanish mackerel is established at 14 inches in total length.

B. Minimum size limit for king mackerel is established at 27 inches in total length.

C. It shall be unlawful for any person to take, catch, or possess any Spanish mackerel less than 14 inches in total length.

D. Except as provided in subsection E of this section it shall be unlawful for any person to take, catch, or possess any king mackerel less than 27 inches in total length.

E. Nothing in this section shall prohibit the taking, catching, or possession of any king mackerel, less than 27 inches in total length, by a licensed pound net.

4VAC20-540-50. Trip Commercial trip limit established.

A. It shall be unlawful for any person to possess or land in Virginia any amount of Spanish mackerel in excess of 3,500 pounds from any vessel in any one day, except as specified in subsection B of this section.

B. When a commercial closure in federal waters for the Northern Zone Atlantic Migratory Group Spanish Mackerel is announced by the National Marine Fisheries Service, it shall be unlawful for any person to possess or land Spanish mackerel in Virginia in excess of 500 pounds from any vessel in any one day. This federal closure and state water per trip possession limit will be posted on the Marine Resources Commission website.

VA.R. Doc. No. R20-6467; Filed August 25, 2020, 12:15 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-20, 4VAC20-610-60; repealing 4VAC20-610-50).**

Statutory Authority: § 28.201 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Regulations

Summary:

The amendments establish mandatory harvest reporting procedures for oysters.

4VAC20-610-20. Definitions.

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

"Agent" means any person who possesses the ~~commercial fisherman registration license~~ Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Clam aquaculture harvester" means any person who harvests clams from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Clam aquaculture product owner" means any person or firm that owns clams on leased, subleased, or fee simple ground, or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

"Clam aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by a clam aquaculture product owner, used to transport clam aquaculture harvesters who do not possess an individual ~~clam aquaculture harvester permit~~ Clam Aquaculture Harvester Permit.

"Cobia" means any fish of the species *Rachycentron canadum*.

"Commerical fisherman" means any person who has obtained a Commercial Fisherman Registration License from the commission.

"Commission" means the Marine Resources Commission.

~~"Commissioner" means the Commissioner of the Marine Resources Commission.~~

"Continuing business enterprise" means any business that is required to have a Virginia Seafood Buyer's License or is required to have a business license by county, city, or local ordinance.

"Mandatory Harvest Reporting Program Web Application" means the online web-based resource provided by the commission to report commercial harvest of seafood at <https://webapps.mrc.virginia.gov/harvest/>.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster aquaculture harvester" means any person who harvests oysters from leased, subleased, or fee simple ground or any aquaculture growing area, within or adjacent to Virginia tidal waters.

"Oyster aquaculture product owner" means any person or firm that owns oysters on leased, subleased, or fee simple ground or any aquaculture growing area within or adjacent to Virginia tidal waters that are raised by any form of aquaculture. This does not include any riparian shellfish gardeners whose activities are authorized by 4VAC20-336, General Permit No. 3 Pertaining to Noncommercial Riparian Shellfish Growing Activities.

"Oyster aquaculture product owner vessel" means any vessel, legally permitted through a no-cost permit, by an oyster aquaculture product owner, used to transport oyster aquaculture harvesters who do not possess an individual oyster aquaculture harvester permit.

~~"Sale" means sale, trade, or barter.~~

~~"Sell" means sell, trade, or barter.~~

~~"Selling" means selling, trading, or bartering.~~

~~"Sold" means sold, traded, or bartered.~~

"Seafood landing licensee" means any individual who has obtained a Seafood Landing License from the commission.

~~4VAC20-610-50. Commercial hook and line license. (Repealed.)~~

~~A. On or after January 1, 1993, it shall be unlawful for any person to take or harvest fish in the tidal waters of Virginia with hook and line, rod and reel, or hand line and to sell such harvest without first having purchased a Commercial Hook and Line License from the commission or its agent.~~

~~B. A Commercial Fisherman Registration License, as described in § 28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.~~

4VAC20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any valid commercial fisherman registration licensee, seafood landing licensee, oyster aquaculture product owner permittee, or clam aquaculture product owner permittee to fail to fully report harvests and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia, to fail to report recreational harvests, upon request, to those authorized by the commission.

C. All registered commercial fishermen and any valid seafood landing licensee shall complete a daily form accurately quantifying and legibly describing that day's harvest from Virginia tidal waters and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form or method approved by the commission. Registered commercial fishermen and seafood landing licensees may use more than one form when selling to more than one buyer.

D. Any oyster aquaculture product owner permittee or clam aquaculture product owner permittee shall ~~complete a~~ provide monthly ~~form~~ harvest records accurately quantifying and legibly describing that month's harvest from Virginia tidal waters as described in subsection H of this section. ~~The forms used to record monthly harvest shall be those provided by the commission or another form approved by the commission.~~ All records shall only be submitted through the Online Mandatory Harvest Reporting Program Web Application.

E. Registered commercial fishermen, seafood landing licensees, valid oyster aquaculture product owner permittees, and valid clam aquaculture product owner permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month, except as described in subsection F of this section. This report shall be accompanied by the daily harvest records described in subsection ~~G~~ H of this section. Completed forms shall be mailed or delivered to the ~~commission or other designated locations~~ Virginia Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, or be submitted through the Online Mandatory Harvest Reporting Program Web Application.

F. All reports of the commercial harvest of cobia shall only be submitted through the Mandatory Harvest Reporting Program Web Application. This report shall provide daily harvest records from Sunday through Saturday as described in subsection ~~G~~ H of this section and be submitted on a weekly basis no later than Wednesday of the following week.

G. All reports of the commercial harvest of oysters shall only be submitted through the Online Mandatory Harvest Reporting Program Web Application. This report shall provide daily harvest records of oysters as described in subsection H of this section and be submitted no later than the fifth day of the following month.

H. The harvest report requirements shall be as follows:

1. Registered commercial fishermen shall be responsible for providing a harvest report and daily harvest records that include the name and signature of the registered commercial fisherman and the commercial fisherman's registration license number; the name and license registration number of any agent, if used; the license registration number of no more than five ~~helpers~~ additional harvesters who were not serving as agents; any buyer or

private sale information; the date of any harvest; the city or county of landing that harvest; the water body fished, gear type, and amount of gear used for that harvest; the number of hours any gear was fished and the number of hours the registered commercial fisherman fished; the number of crew on board, including captain; species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number). Any information on the price paid for the harvest may be provided voluntarily.

2. The harvest report from oyster aquaculture product owner permittees and clam aquaculture product owner permittees shall include the name, signature, permit number, lease number, date of the last day of the reporting month, city or county of landing, gear (growing technique) used, weight or amount of species harvested by market category, total number of individual crew members for the month, and buyer or private sale information.

3. The harvest report and daily harvest records from seafood landing licensees shall include the name and signature of the seafood landing licensee and the licensee's seafood landing license number; buyer or private sale information; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours gear fished; number of hours the seafood landing licensee fished; number of crew on board, including captain; ~~nonfederally~~ non-federally permitted species harvested; market category; live weight or processed weight of species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

~~H.~~ I. Registered commercial fishermen, oyster aquaculture product owner permittees and clam aquaculture product owner permittees not fishing during a month, or seafood landing licensees not landing in Virginia during a month shall so notify the commission no later than the fifth of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line or through the Online Mandatory Harvest Reporting Program Web Application.

~~I.~~ J. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily harvest record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

~~J.~~ Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees, and clam aquaculture product owner permittees shall maintain their harvest records for one year and shall make them available upon request to those authorized by the commission.

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K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine vessel (snapper rig) licensed under the provisions of § 28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

M. Registered commercial fishermen, seafood landing licensees, and licensed seafood buyers shall allow those authorized by the commission to sample harvest and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner that does not hinder normal business operations.

N. Registered commercial fishermen, seafood landing licensees, oyster aquaculture product owner permittees, and clam aquaculture product owner permittees shall maintain their harvest records for one year and shall make them available upon request to those authorized by the commission.

VA.R. Doc. No. R21-6500; Filed August 26, 2020, 10:41 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-10, 4VAC20-620-40, 4VAC20-620-80; adding 4VAC20-620-41, 4VAC20-620-42).

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

Effective Date: September 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) incorporate provisions for landing licenses pertaining to summer flounder previously under the general landing licenses regulation, (ii) remove the tonnage requirement as it relates to baseline vessels for transfers, and (iii) establish the fall 2020 commercial offshore summer flounder fishery management measures.

4VAC20-620-10. Purpose.

The purpose of this chapter is to ~~reduce~~ manage commercial and recreational fishing mortality in order to ~~rebuild the severely depleted~~ maintain healthy stocks of summer flounder and to establish a license for commercial fishing vessels to land summer flounder in Virginia.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, E, and F of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops, and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina or New Jersey vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina or New Jersey vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection K of this section.

C. From February 24 through March 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.
2. Land in Virginia more than a total of 12,500 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From ~~October 1~~ September 8 through ~~November 15~~ October 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this

subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of ~~40,000~~ 12,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From November ~~46~~ 1 through December 31, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina or New Jersey landing limit or trip limit.

2. Land in Virginia more than a total of ~~40,000~~ 12,000 pounds of summer flounder.

3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

F. From January 1 through December 31, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

G. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

H. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed, and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection K of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection K of this section.

I. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the

appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

J. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

K. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

L. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

M. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

4VAC20-620-41. Summer flounder endorsement license, restricted summer flounder endorsement license, and exemption.

A. It shall be unlawful for any boat or vessel to land summer flounder in Virginia, for commercial purposes, without first obtaining a Seafood Landing License as described in 4VAC20-920-30 and a Summer Flounder Endorsement License or possessing a Restricted Summer Flounder

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Endorsement License. The Summer Flounder Endorsement License shall be required of each boat or vessel used to land summer flounder for commercial purposes. Possession of any quantity of summer flounder that exceeds the possession limit, described in 4VAC20-620-60, shall be presumed to be for commercial purposes. Any boat or vessel so licensed shall display a Summer Flounder Endorsement License decal, provided by the Virginia Marine Resources Commission. The decals shall be displayed on both the port and starboard sides of the pilot house.

B. It shall be unlawful for any buyer of seafood to receive any summer flounder from any boat or vessel that is not licensed for the landing of summer flounder unless that boat or vessel is exempt from the requirement to obtain a Seafood Landing License and a Summer Flounder Endorsement License as described in 4VAC20-920-30 and this section.

C. Any boat or vessel that is both owned and operated by a person who holds a valid Virginia Commercial Fisherman Registration License and is used solely for fishing for summer flounder only in Virginia waters shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.

D. Any boat or vessel operated by a person harvesting and landing marine seafood from the Potomac River who holds a valid Potomac River Fisheries Commission commercial license shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.

E. Any boat or vessel operated by a person harvesting and landing marine seafood from leased ground or reharvesting marine seafood as part of the relay process shall be exempt from the requirements to obtain a Summer Flounder Endorsement License.

F. To be eligible for a Summer Flounder Endorsement License the boat or vessel shall have landed and sold at least 500 pounds of summer flounder in Virginia in at least one year during the period of 1993 through 1995.

1. The owner shall complete an application for each boat or vessel by providing to the commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name, and registration or documentation number and a copy of the vessel's federal summer flounder moratorium permit.

2. The owner shall complete a notarized authorization to allow the commission to obtain copies of landings data from the National Marine Fisheries Service.

G. To be eligible for a Restricted Summer Flounder Endorsement License (RSFEL), a person must be a legal Virginia commercial hook-and-line licensee and own a vessel issued a valid federal summer flounder moratorium permit. The person shall complete an application for the RSFEL by providing to the commission a notarized and signed statement

of the person's name, address, telephone number, boat or vessel name, the boat or vessel's registration or documentation number, and a copy of that vessel's federal summer flounder moratorium permit.

H. Effective February 24, 2004, any vessel eligible for a Summer Flounder Endorsement License shall be considered a baseline vessel, and that vessel's total length shall be used to determine eligibility for all future transfers of that Summer Flounder Endorsement License. A Summer Flounder Endorsement License may be transferred from one vessel to another vessel that is entering the summer flounder fishery, provided the vessel receiving the Summer Flounder Endorsement License does not exceed by more than 10% the total length of the baseline vessel that held that Summer Flounder Endorsement License on February 24, 2004.

4VAC20-620-42. Summer flounder endorsement license and hardship exception.

Any licensed fisherman who provides to the commissioner an opinion and supporting documentation from an attending physician of an existing medical condition, proof of active military service, documentation that indicates substantial vessel damage, or other significant extenuating circumstances that prevented that licensed fisherman from satisfying the eligibility criteria described in 4VAC 20-620-41 F and can provide documentation of having landed at least 500 pounds of summer flounder during any one year of the 1990 through 1992 period may be authorized for an exception to the requirements to be eligible for a Summer Flounder Endorsement License as described in 4VAC 20-620-41 F.

4VAC20-620-80. Penalty.

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

B. Any person found guilty of violating any of the seafood laws or regulations of Virginia may have that person's Summer Flounder Endorsement License revoked upon review by the commission as provided for in § 28.2-232 of the Code of Virginia.

VA.R. Doc. No. R21-6499; Filed August 26, 2020, 10:37 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40 through 4VAC20-720-85, 4VAC20-720-91).

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

Effective Date: October 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish for 2020-2021 the (i) areas of public oyster harvest, (ii) duration of public oyster harvest seasons, and (iii) public oyster harvest conservation measures.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means the Public Grounds within the Coan River ~~excluding~~ consisting of Public Grounds 77 and 78 of Northumberland County: described as:

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N.,

Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Corrotoman Hand Tong Area" means all public grounds, in that area of the Corrotoman River between a line beginning at Ball Point, Latitude 37° 40.65133000' N., Longitude 76° 28.4440000' W.; thence easterly to a point at the western side of the mouth of Taylor Creek, at Latitude 37° 40.97331000' N., Longitude 76° 27.59471000' W.; upstream to a line from Bar Point, Latitude 37° 41.65256000' N., Longitude 76° 28.66195000' W.; thence easterly to Black Stump Point, Latitude 37° 41.7360900' N., Longitude 76° 28.1212200' W.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.44666039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Rotation Area1" means all public grounds and unassigned grounds, in that area of the Great

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Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pier head at Fleeton Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico River Light; Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence westerly to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence northerly crossing the entrance to Towles Creek at the offshore ends of the jetties and continuing along the mean low water line to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W., said point being the point of beginning.

"Great Wicomico River Rotation Area 2" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water line to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence easterly to Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W., said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of

extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consists of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Area 1" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence southeasterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence southeasterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence southeasterly to the northeast corner of the western draw span pier of the James River Bridge (U.S. Route 17), Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence southwesterly along the upstream side of the James River Bridge to the mean low water line; thence northwesterly along the mean low water line, crossing Kings Creek at the headlands and continuing along the mean low water line to a point on the shore at Rainbow Farm Point in line with VMRC Markers "STH" and "SMT," located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 2" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; thence southeasterly along the mean low water line to the upstream side of the James River Bridge (U.S. Route 17); thence westerly along the James River Bridge to the northeast corner of the western draw span pier, Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence northwesterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence northwesterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence northwesterly to the

Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Area 3" means those public grounds of Isle of Wight County and Nansemond County (City of Suffolk) located in the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude

37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means that area of Mobjack Bay consisting of Public Ground 2 of Mathews County (Pultz Bar) and Public Ground 25 of Gloucester County (Tow Stake) described as:

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at

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Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an unnamed cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Ground 9 and Public Ground 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37°

56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound

Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37°

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40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5310000' N., Longitude 76° 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar –

South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwestwardly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Unassigned ground" means all grounds not assigned pursuant to §§ 28.2-600 through 28.2-633 of the Code of Virginia, established pursuant to § 28.2-551 of the Code of Virginia, or set aside by court order, or those grounds set aside by declarations or regulation by the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the

Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwestwardly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwestwardly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 100, 107, and 112 of Northumberland County described as:

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 100 of Northumberland County is located in the South Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 00.2292779' N., Longitude 76° 32.2244222' W.; thence southwestwardly to Corner 2, Latitude 38° 00.2183904' N., Longitude 76° 32.2488009' W.; thence westerly to Corner 3, Latitude 38° 00.2156893' N., Longitude 76° 32.3156220' W.; thence northwesterly to Corner 4, Latitude 38° 00.4024997' N., Longitude 76° 32.3338888' W.; thence continuing northeasterly to Corner 5, Latitude 38° 00.5806170' N., Longitude 76° 32.1957546' W.; thence continuing easterly to Corner 6, Latitude 38° 00.5798424' N., Longitude 76° 31.9506788' W.; thence continuing southeasterly to Corner 7, Latitude 38° 00.5076459' N., Longitude 76° 31.9387425' W.; thence heading along the mean low water southwestwardly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point

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approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 112 of Northumberland County is located in the Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 01.8449428' N., Longitude 76° 32.2191877' W.; thence northeasterly to Corner 2, Latitude 38° 01.8783929' N., Longitude 76° 31.9970988' W.; thence southeasterly to Corner 3, Latitude 38° 01.7997003' N., 76° 31.9569302' W.; thence continuing southeasterly to Corner 4, Latitude 38° 01.6848729' N., Longitude 76° 31.5931801' W.; thence southerly to Corner 5, Latitude 38° 01.5760153' N., 76° 31.5931801' W.; thence westerly to Corner 6, Latitude 38° 01.6860521' N., Longitude 76° 32.2820100' W.; thence northerly to Corner 1, said corner being the point of beginning.

"York River Hand Tong Area" means that area of the York River consisting of a portion of Public Ground 31 of Gloucester County (Aberdeen Rock), Public Ground 901 of Gloucester and King and Queen Counties and that portion of Public Ground 4 of King and Queen County that is in waters approved by the Virginia Department of Health for the harvest of Shellfish (Bell Rock) described as:

Public Ground 31 of Gloucester County, known as Aberdeen Rock, is that portion of Public Ground between a line from Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.74276' N., Longitude 76° 35.49063' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB," Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

Public Ground 901 of Gloucester and King and Queen Counties is located in the York River at the mouth of the Propotank River, beginning at said point being Corner 1, located at Latitude 37° 26.0291178' N., Longitude 76° 42.4769473' W.; thence northwesterly to Corner 2, Latitude 37° 26.1502199' N., Longitude 76° 42.5504403' W.; thence continuing northwesterly to Corner 3, Latitude 37° 26.2593188' N., Longitude 76° 42.5639668' W.; thence southeasterly to Corner 4, Latitude 37° 26.0537949' N., Longitude 76° 42.3217587' W.; thence southwesterly to Corner 5, Latitude 37° 26.0023548' N., Longitude 76° 42.4076221' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 4 of King and Queen County, known as Bell Rock, is located in the York River, beginning at said point being Corner 1, located at Latitude 37° 29.1377467' N., Longitude 76° 45.0390139' W.; thence southerly to Corner 2, Latitude 37° 29.0456979' N., Longitude 76° 45.0642131' W.; thence northwesterly to Corner 3, Latitude 37° 29.5582048' N., Longitude 76° 45.8484481' W.; thence continuing northwesterly to Corner 4, Latitude 37° 29.8480848' N., Longitude 76° 46.5362330' W.; thence northeasterly to Corner 5, Latitude 37° 30.0087805' N., Longitude 76° 46.3513889' W.; thence continue southeasterly to Corner 6, Latitude 37° 29.6554103' N., Longitude 76° 45.5620462' W., thence continuing southeasterly to Corner 7, Latitude 37° 29.1838193' N., Longitude 76° 44.8908342' W., thence continue southeasterly to Corner 8, Latitude 37° 29.1094227' N., Longitude 76° 44.7985114' W., thence continue southeasterly to Corner 9, Latitude 37° 28.9796379' N., Longitude 76° 44.6726329' W., thence continue southeasterly to Corner 10, Latitude 37° 28.7771294' N., Longitude 76° 44.5058580' W., thence continue southeasterly to Corner 11, Latitude 37° 28.6286905' N., Longitude 76° 44.4140389' W., thence continue southeasterly to Corner 12, Latitude 37° 28.4745509' N., Longitude 76° 44.3267558' W., thence continue southeasterly to Corner 13, Latitude 37° 28.4379124' N., Longitude 76° 44.2964890' W., thence continue southeasterly to Corner 14, Latitude 37° 28.3255929' N., Longitude 76° 44.2037875' W., thence continue southeasterly to Corner 15, Latitude 37° 28.2389865' N., Longitude 76° 44.1706101' W., thence continue southeasterly to Corner 16, Latitude 37° 28.2157560' N.,

Longitude 76° 44.1552324' W., thence westerly to Corner 17, Latitude 37° 28.1396622' N., Longitude 76° 44.3698473' W., thence northerly to Corner 18, Latitude 37° 28.7398061' N., Longitude 76° 44.7807027' W., thence continue northerly to Corner 19, Latitude 37° 28.8838652' N., Longitude 76° 44.8818391' W., thence easterly to Corner 20, Latitude 37° 28.9140411' N., Longitude 76° 44.8163514' W. thence northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the ~~Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank~~ Upper York River Green Channel Marker 9, Latitude 37° 19.35986' N., Longitude 76° 35.99789' W.; thence northeasterly to Gum Point, Latitude 37° 19.7427600' N., Longitude 76° 35.4906300' W.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

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 this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2019~~ 2020, through April 30, ~~2020~~ 2021 (hand tong only).
2. Milford Haven: December 1, ~~2019~~ 2020, through February 28, ~~2020~~ 2021 (hand tong only).
3. Rappahannock River Area 9: ~~November~~ October 1, 2019 2020, through December 31, ~~2019~~ 2020 (hand tong only).
4. ~~Rappahannock River Area 7: October 1, 2019, through October 31, 2019 (hand tong only).~~ Corrotoman Hand Tong Area: October 1, 2020, through December 31, 2020.
5. Little Wicomico River: October 1, ~~2019~~ 2020, through December 31, ~~2019~~ 2020 (hand tong only).

6. Coan River Area: October 1, ~~2019~~ 2020, through December 31, ~~2019~~ 2020 (hand tong only).
7. Yeocomico River Area: October 1, ~~2019~~ 2020, through December 31, ~~2019~~ 2020 (hand tong only).
8. ~~Nomini Creek Area: October 1, 2019, through December 31, 2019~~ York River Hand Tong Area: December 1, 2020, through February 28, 2021 (hand tong only).
9. York River Rotation Area ~~2~~ 1: ~~November~~ October 1, 2019 2020, through November 30, ~~2019~~ 2020 (hand tong only).
10. James River Areas 1, 2, and 3: October 1, ~~2019~~ 2020, through October 31, ~~2019~~ 2020, and February 1, 2021, through February 28, 2021 (hand tong only).
11. Pocomoke Sound Area: December 1, 2020, through January 31, 2021 (hand tong only).
- ~~12.~~ 13. York River Rotation Area ~~2~~ 1: February 1, ~~2020~~ 2021, through February 28, ~~2020~~ 2021 (hand scrape only).
- ~~12.~~ 13. Rappahannock River Rotation Area ~~2~~ 6: November 1, ~~2019~~ 2020, through November 30, ~~2019~~ 2020, and ~~February~~ January 1, ~~2020~~ 2021, through ~~February 28, 2020~~ January 31, 2021 (hand scrape only).
- ~~13.~~ 14. Rappahannock River ~~Rotation~~ Area ~~4~~ 7: December 1, ~~2019~~ 2020, through ~~January~~ December 31, 2020, and ~~February 1, 2021, through February 28, 2021~~ (hand scrape only).
14. ~~15.~~ Great Wicomico River Rotation Area ~~4~~ 2: December 1, ~~2019~~ 2020, through ~~December~~ January 31, 2019, and February 1, 2020, through February 28, 2020 2021 (hand scrape only).
15. ~~16.~~ James River Areas 1, 2, and 3: November 1, ~~2019~~ 2020, through January 31, ~~2020~~ 2021 (hand scrape only).
- ~~16.~~ 17. Pocomoke Sound Area: February 1, 2021, through February 28, 2021 (hand scrape only).
- ~~18.~~ 18. Upper Chesapeake Bay - Blackberry Hangs Area: February 1, 2021, through February 28, 2021 (hand scrape only).
- ~~19.~~ 19. Pocomoke Sound Rotation Area ~~4~~ 2: December 1, ~~2019~~ 2020, through February 28, ~~2020~~ 2021 (dredge only).
- ~~17.~~ 20. Tangier Sound Rotation Area ~~4~~ 2: December 1, ~~2019~~ 2020, through February 28, ~~2020~~ 2021 (dredge only).
- ~~18.~~ 21. Deep Rock Area: December 1, ~~2019~~ 2020, through February 28, ~~2020~~ 2021 (patent tong only).
- ~~19.~~ 19. Rappahannock River Rotation Area 2: October 1, 2019, through October 31, 2019 (patent tong only).
- ~~20.~~ 20. Rappahannock River Rotation Area 4: November 1, 2019, through November 30, 2019 (patent tong only).

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~~22.~~ 22. Upper Chesapeake Bay - Blackberry Hangs Area: ~~October 1, 2020, through October 31, 2020 (patent tong only).~~

~~24.~~ 23. Rappahannock River Rotation Area 1: ~~February November 1, 2020, through February 28, 2020 November 30, 2020, and February 1, 2021, through March 12, 2021 (patent tong only).~~

~~22.~~ 24. Seaside of the Eastern Shore (for clean cull oysters only): ~~November 1, 2019 2020, through March 31, 2020 2021 (by hand and hand tong only).~~

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 this subsection.

1. James River Seed Area: ~~October 1, 2019 2020, through May 31, 2020 2021 (hand tong only).~~

2. Deep Water Shoal State Replenishment Seed Area: ~~October 1, 2019 2020, through May 31, 2020 2021 (hand tong only).~~

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through B ~~40 11~~, B ~~48 21~~ through B ~~24 23~~, and C. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B ~~44 12~~ through B ~~47 20~~ from December 1, ~~2019 2020~~, through January 31, ~~2020 2021~~. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 12 noon from the areas described in 4VAC20-720-40 B ~~44 12~~ through B ~~47 20~~ from November 1, ~~2019 2020~~, through November 30, ~~2019 2020~~, and February 1, ~~2020 2021~~, through February 28, ~~2020 2021~~. In addition, it shall be unlawful for any boat with an oyster dredge or hand scrape aboard to leave the dock until one hour before sunrise or return to the dock after sunset.

C. On the seaside of the Eastern Shore, it shall be unlawful for any person to harvest by hand or attempt to harvest oysters by hand prior to sunrise or after sunset. It shall be unlawful for any person to harvest oysters by hand tong or attempt to harvest oysters by hand tong prior to sunrise or after 2 p.m.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area and the areas described in 4VAC20-720-40 B 1 through B ~~40 11~~ except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters by any gear from the seaside of the Eastern Shore except by hand or hand tong. It shall be unlawful to harvest oysters that are not submerged at mean low water by any gear other than by hand.

C. It shall be unlawful to harvest oysters from the areas described in 4VAC20-720-40 B ~~44 12~~ through B ~~45 18~~ by any gear except hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board his vessel while he is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board his vessel while he is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area ~~4 2~~, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the areas described in 4VAC20-720-40 B ~~48 21~~ through B ~~24 23~~ except by patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish with a hand scrape from the public oyster grounds as described in 4VAC20-720-70 C unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds in the Pocomoke and Tangier Sounds Rotation Area ~~4 2~~, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds, as described in 4VAC20-720-70 F unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the seaside of the Eastern Shore as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster by hand license. It shall be unlawful for any person to harvest shellfish from the

public oyster grounds on the seaside of the Eastern Shore by hand tong, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75 A and B, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand scrape or dredge license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels clean cull oysters when the vessel is using the hand scrape or oyster dredge.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand or hand tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of ~~12~~ 14 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit ~~for~~ of 28 bushels clean cull oysters when the vessel is using hand tongs or harvesting by hand ~~whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and have paid the oyster resource user fee multiplied by 12.~~

C. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area as described in 4VAC20-720-75 and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid patent tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels of clean cull oysters harvested from the areas described in 4VAC20-720-40 B when the vessel is using patent tongs.

D. In the Pocomoke and Tangier Sounds Rotation Area ~~±~~ 2, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

4VAC20-720-85. James River seed quota and monitoring.

A. An oyster seed harvest quota of 120,000 bushels of seed is established for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area. Once it has been projected and announced that the quota of seed has

been attained, it shall be unlawful for any person to harvest seed oysters from these areas.

B. Of the 120,000-bushel seed quota described in subsection A of this section no more than ~~40,000~~ 30,000 bushels of this quota may be harvested from October 1 through December 31. However, if it is projected and announced that ~~40,000~~ 30,000 bushels of seed have been harvested before December 31, it shall be unlawful for any person to harvest seed oysters from that date forward until January 1.

C. Any person harvesting or landing oyster seed from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, shall report monthly on forms provided by the Virginia Marine Resources Commission all harvest of seed oysters. Reporting requirements shall consist of that person's Commercial Fisherman Registration License number, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

D. It shall be unlawful for any person harvesting seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, to fail to contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of harvest or landing and provide that person's name, Commercial Fisherman Registration License number, time, date, daily number of bushels of seed oysters harvested, harvest rock location, planting location (any lease numbers), and buyer name.

4VAC20-720-91. Harvest permit required for the James River Seed Area, including the Deep Water Shoal State Replenishment Area.

A. A harvest permit shall be required for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, for the harvesting of seed oysters. It shall be unlawful for any person to harvest or attempt to harvest seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, without first obtaining and having on board a harvest permit.

B. The commissioner may cease granting permits required by § ~~28.2-535~~ or 28.2-546 of the Code of Virginia when he determines that the seed areas currently open to harvest are becoming depleted and the additional granting of such permits could seriously injure the seed areas.

VA.R. Doc. No. R21-6501; Filed August 26, 2020, 12:52 p.m.

Final Regulation

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

Regulations

Title of Regulation: **4VAC20-920. Pertaining to Landing Licenses (amending 4VAC20-920-10, 4VAC20-920-50; repealing 4VAC20-920-40, 4VAC20-920-45).**

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

Effective Date: September 1, 2020.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments remove provisions pertaining to landing licenses for summer flounder from the commercial seafood landing license chapter so that those provisions can be moved into the regulations pertaining to summer flounder.

4VAC20-920-10. Purpose.

The purpose of this chapter is to establish a license for the landing of seafood for commercial purposes in Virginia and to limit the number of commercial fishing vessels which may land Summer Flounder in Virginia.

4VAC20-920-40. ~~Summer Flounder Endorsement License, Restricted Summer Flounder Endorsement License, and exemption. (Repealed.)~~

~~A. It shall be unlawful for any boat or vessel to land Summer Flounder in Virginia for commercial purposes, without first obtaining a Seafood Landing License as described in 4VAC20-920-30 and a Summer Flounder Endorsement License or possessing a Restricted Summer Flounder Endorsement License. The Summer Flounder Endorsement License shall be required of each boat or vessel used to land Summer Flounder for commercial purposes. Possession of any quantity of Summer Flounder which exceeds the possession limit, described in 4VAC20-620-60, shall be presumed to be for commercial purposes. Any boat or vessel so licensed shall display a Summer Flounder Endorsement License decal, provided by the Virginia Marine Resources Commission. The decals shall be displayed on both the port and starboard sides of the pilot house.~~

~~B. It shall be unlawful for any buyer of seafood to receive any Summer Flounder from any boat or vessel which is not licensed for the landing of Summer Flounder unless that boat or vessel is exempt from the requirement to obtain a Seafood Landing License and a Summer Flounder Endorsement License as described in 4VAC20-920-30 and this section.~~

~~C. Any boat or vessel that is both owned and operated by a person who holds a valid Virginia Commercial Fisherman Registration License and is used solely for fishing for summer flounder only in Virginia waters shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.~~

~~D. Any boat or vessel operated by a person harvesting and landing marine seafood from the Potomac River who holds a valid Potomac River Fisheries Commission commercial license shall be exempt from the requirement to obtain a Summer Flounder Endorsement License.~~

~~E. Any boat or vessel operated by a person harvesting and landing marine seafood from leased ground or reharvesting marine seafood as part of the relay process shall be exempt from the requirements to obtain a Summer Flounder Endorsement License.~~

~~F. To be eligible for a Summer Flounder Endorsement License the boat or vessel shall have landed and sold at least 500 pounds of Summer Flounder in Virginia in at least one year during the period of 1993 through 1995.~~

~~1. The owner shall complete an application for each boat or vessel by providing to the commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name, and registration or documentation number and a copy of the vessel's federal Summer Flounder moratorium permit.~~

~~2. The owner shall complete a notarized authorization to allow the commission to obtain copies of landings data from the National Marine Fisheries Service.~~

~~G. To be eligible for a Restricted Summer Flounder Endorsement License (RSFEL), a person must be a legal Virginia Commercial Hook and Line Licensee and own a vessel issued a valid federal Summer Flounder moratorium permit. The person shall complete an application for the RSFEL by providing to the commission a notarized and signed statement of his name, address, telephone number, boat or vessel name, and its registration or documentation number, as well as a copy of that vessel's federal Summer Flounder moratorium permit.~~

~~H. Effective February 24, 2004, any vessel eligible for a Summer Flounder Endorsement License shall be considered a baseline vessel, and that vessel's total length and gross tonnage shall be used to determine eligibility for all future transfers of that Summer Flounder Endorsement License. A Summer Flounder Endorsement License may be transferred from one vessel to another vessel that is entering the Summer Flounder fishery, provided the vessel receiving the Summer Flounder Endorsement License does not exceed, by more than 10%, the total length and gross tonnage of the baseline vessel that held that Summer Flounder Endorsement License on February 24, 2004.~~

4VAC20-920-45. ~~Summer flounder endorsement license and hardship exception. (Repealed.)~~

~~Any licensed fisherman who provides to the commissioner an opinion and supporting documentation from an attending physician of an existing medical condition, proof of active military service, documentation that indicates substantial~~

vessel damage or other significant extenuating circumstances that prevented him from satisfying the eligibility criteria described in 4VAC20-920-40 F and can provide documentation of having landed at least 500 pounds of summer flounder during any one year of the 1990-1992 period may be authorized for an exception to the requirements to be eligible for a summer flounder endorsement license as described in 4VAC20-920-40 F.

4VAC20-920-50. Penalty.

A. As set forth in § 28.2-228.1 of the Code of Virginia, the following shall constitute Class 3 misdemeanors: (i) landing seafood without the license required by this chapter and (ii) failure to produce or have available for inspection the license required by this chapter when requested by any officer. Failure to produce the license is prima facie evidence that the person is landing seafood without a license.

B. Any person found guilty of violating any of the seafood laws or regulations of Virginia may have ~~his~~ that person's Seafood Landing License and ~~Summer Flounder Endorsement License~~ revoked upon review by the commission as provided for in § 28.2-232 of the Code of Virginia.

V.A.R. Doc. No. R21-6498; Filed August 26, 2020, 10:35 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC20-441. Regulations Governing the Employment of Professional Personnel (amending 8VAC20-441-50).**

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Effective Date: October 14, 2020.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

Pursuant to Chapters 53 and 167 of the 2020 Acts of Assembly, the amendments remove the option for local school boards to extend the three-year probationary term of service for teachers by up to two additional years.

8VAC20-441-50. Length of the probationary term for teacher.

A probationary term of full-time employment under an annual contract for ~~at least three years and, at the option of the local school board, up to five consecutive years~~ in the same school division is required before a teacher is issued a continuing contract. Once continuing contract status has been attained in a school division in the Commonwealth, another probationary period as a teacher need not be served in any other school division unless a probationary period not exceeding two years is made a part of the contract of employment.

V.A.R. Doc. No. R21-6464; Filed August 20, 2020, 11:54 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC20-543. Regulations Governing the Review and Approval of Education Programs in Virginia (amending 8VAC20-543-10, 8VAC20-543-20, 8VAC20-543-70, 8VAC20-543-600).**

Statutory Authority: §§ 22.1-16 and 22.1-298.2 of the Code of Virginia.

Effective Date: October 14, 2020.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

The amendments implement the requirements of legislation passed during the 2018 Session of the General Assembly, including (i) Chapters 282 and 588, which require each education preparation program offered by a public institution of higher education or private institution of higher education that leads to a degree, concentration, or certificate for reading specialists to include a program of coursework or other training in the identification of and the appropriate interventions, accommodations, and

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teaching techniques for students with dyslexia or a related disorder; and (ii) Chapters 748 and 749, which expand the definition of education preparation program to include four-year bachelor's degree programs in teacher education.

Part I Definitions

8VAC20-543-10. Definitions.

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

"Accreditation" means a process for assessing and improving academic and educational quality through voluntary peer review. This process informs the public that an institution has a professional education program that has met national standards of educational quality.

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the United States Department of Education.

"Accredited program" means a Virginia professional education program nationally accredited by the Council for the Accreditation of Educator Preparation (CAEP).

"Annual ~~professional~~ education ~~preparation~~ program profile" means the Virginia Department of Education yearly data ~~education—preparation~~ program profile required of all professional education programs in Virginia that offer approved programs for the preparation of school personnel.

"Biennial accountability measures" means those specific benchmarks set forth in 8VAC20-543-40 to meet the standards required to obtain or maintain education endorsement program approval status.

"Biennial accountability measurement report" means the compliance report submitted to the Virginia Department of Education every two years by an accredited professional education program.

"Candidates" means individuals enrolled in education programs.

"Department" means the Virginia Department of Education.

"Diversity" means the wide range of differences among groups of people and individuals based on ethnicity, race, socioeconomic status, gender, exceptionalities, language, religion, and geographical area.

"Education endorsement program" means a state-approved course of study, the completion of which signifies that an enrollee has met all the state's educational and training requirements for initial licensure in a specified endorsement area.

"Field experiences" means program components that are (i) conducted in off-campus settings or on-campus settings dedicated to the instruction of children who would or could otherwise be served by school divisions in Virginia or accredited nonpublic schools and (ii) accredited for this purpose by external entities such as regional accrediting agencies. Field experiences include classroom observations, tutoring, assisting teachers and school administrators, and supervised clinical experiences (i.e., practica, student teaching, and internships). Field experiences are required for all programs.

"Indicators" means operational definitions that suggest the kinds of evidence that professional education programs shall provide to demonstrate that a standard is met.

"Instructional technology" means the theory and practice of design, development, utilization, management, and evaluation of processes and resources for learning and the use of computers and other technologies.

"Licensing" means the official recognition by a state governmental agency that an individual has met state requirements and is, therefore, approved to practice as a licensed professional.

"Professional education program" or "education preparation program" means the Virginia institution, college, school, department or other administrative body within a Virginia institution of higher education, or another Virginia entity, for a defined education program that is primarily responsible for the preparation of teachers and other professional school personnel, and for purposes of this chapter, includes four-year bachelor's degree programs in teacher education.

"Professional studies" means courses and other learning experiences designed to prepare candidates to demonstrate competence in the areas of human development and learning, curriculum and instruction, assessment of and for learning, classroom and behavior management, the foundations of education and the teaching profession, reading, and supervised clinical experiences.

"Program approval" means the process by which a state governmental agency reviews an education program to determine if it meets the state's standards for the preparation of school personnel.

"Program completers" means individuals who have successfully completed all coursework, required licensure assessments, including those prescribed by the Board of Education, and supervised student teaching or the required internship.

"Program noncompleters" means individuals who have been officially admitted into an education program and who have taken, regardless of whether the individuals passed or failed, required licensure assessments and have successfully completed all coursework, but who have not completed

supervised student teaching or the required internship. Program noncompleters shall have been officially released in writing from an education endorsement program by an authorized administrator of the program. Program noncompleters who did not take required assessments are not included in biennial reporting pass rates.

"Regional accrediting agency" means one of the six accrediting associations recognized by the United States Department of Education as follows: New England Association of Schools and Colleges, Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

"Virginia Standards of Learning for Virginia public schools" means the Commonwealth's expectations for student learning and achievement in grades K-12 in English, mathematics, science, history/social science, technology, fine arts, foreign language, health and physical education, and driver education.

Part II

Accreditation and Administering this Chapter

8VAC20-543-20. Accreditation and administering this chapter.

A. Institutions of higher education seeking approval of an education endorsement program shall be accredited by a regional accrediting agency.

B. Professional education programs in Virginia shall obtain and maintain national accreditation from the Council for the Accreditation of Educator Preparation (CAEP). Professional education programs in Virginia seeking accreditation through CAEP shall adhere to procedures and timelines established by CAEP and the CAEP/Virginia Partnership Agreement. Professional education programs shall ensure and document that programs are aligned with standards set forth in 8VAC20-543-40 through 8VAC20-543-50 and meet competencies outlined in 8VAC20-543-60 through 8VAC20-543-640.

C. If a professional education program fails to maintain accreditation, enrolled candidates shall be permitted to complete their programs of study. Professional education programs that fail to maintain accreditation shall not admit new candidates. Candidates shall be notified of the education endorsement program's approval status.

D. Teacher candidates ~~shall~~ may complete academic degrees in the arts and sciences, or equivalent, ~~except in health, physical, and career and technical education.~~ "Education preparation program" includes four-year bachelor's degree programs in teacher education. Candidates in early/primary education (preK-3), elementary education (preK-6), middle

education (6-8), and special education programs may complete a major in interdisciplinary studies or its equivalent. Candidates seeking a secondary endorsement area must have earned a major, or the equivalent, in the area sought.

E. Professional studies coursework and methodology, including field experiences, required in this chapter shall be designed for completion within an approved program.

F. Professional education programs shall ensure that candidates demonstrate proficiency in the use of educational technology for instruction; complete study in child abuse recognition and intervention; and complete training or certification in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. Candidates in education endorsement programs must demonstrate an understanding of competencies, including the core concepts and facts of the disciplines and the Virginia Standards of Learning, for the content areas they plan to teach. Professional education programs shall ensure that candidates demonstrate skills needed to help preK-12 students achieve college and career performance expectations.

G. Standards and procedures for the review and approval of each education endorsement program shall adhere to procedures for administering the chapter as defined in this section and in 8VAC20-543-40, 8VAC20-543-50, and 8VAC20-543-60. These procedures shall result in biennial recommendations to the Board of Education for one of the following three ratings: "approved," "approved with stipulations," or "approval denied."

H. Education endorsement programs shall be approved under this chapter biennially based on compliance with the criteria described in 8VAC20-543-40, 8VAC20-543-50, and 8VAC20-543-60.

I. The Department of Education will determine the timeline and procedures for applying for education endorsement program approval.

J. Education endorsement programs in Virginia shall address the competencies set forth in this chapter, and the curriculum for each program must be documented and submitted to the Department of Education for approval.

K. Professional education programs shall submit to the Department of Education on behalf of each education endorsement program under consideration a biennial accountability measurement report and an annual professional education preparation program profile to include data prescribed by the Board of Education on education endorsement programs in accordance with department procedures and timelines.

L. The professional education program authorized administrator shall maintain copies of approved education endorsement programs and required reports.

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M. The Department of Education may conduct onsite visits to review education endorsement programs and verify data.

N. The Advisory Board on Teacher Education and Licensure (ABTEL) is authorized to review and make recommendations to the Board of Education on approval of Virginia education endorsement programs for school personnel. The Board of Education has final authority on education endorsement program approval.

O. In administering this chapter, licensure requirements for Virginia are outlined in the Licensure Regulations for School Personnel (8VAC20-23). This document should be referenced for detailed information regarding requirements for Virginia licensure. An individual must meet licensure requirements set forth in the Code of Virginia.

P. Modifications may be made by the Superintendent of Public Instruction in the administration of this chapter. Proposed modifications shall be made in writing to the Superintendent of Public Instruction, Commonwealth of Virginia.

Q. Upon the effective date of this chapter, the Board of Education grants colleges and universities two years to align their existing approved programs with this chapter and allows only college and universities that on the effective date of this chapter are accredited by the Board of Education process four years to become accredited by the Council for the Accreditation of Educator Preparation (CAEP) with the option of submitting a progress report to the Superintendent of Public Instruction to request an additional year, if needed.

8VAC20-543-70. Annual professional education ~~preparation~~ program profile.

The accredited professional education program shall submit to the Virginia Department of Education a yearly ~~education preparation~~ program profile on the preparation of professional school personnel. The professional education ~~preparation~~ program profile shall be published on the department's website. The information required on the professional education ~~preparation~~ program profile shall be approved by the Board of Education and shall include the following:

1. Institution's accreditation status;
2. Education endorsement program status;
3. Number of candidates admitted in education endorsement programs;
4. Comparison of candidates, admitted to education endorsement programs to overall college or university population;
5. Number of program completers for each endorsement program;
6. Number of program noncompleters for each endorsement program;

7. Biennial accountability data results;
8. Satisfaction ratings by school administrators and clinical experience supervisors of student teachers;
9. Satisfaction ratings by employers of program graduates;
10. Satisfaction ratings of program graduates within two years of employment;
11. Recognition of other program achievements; and
12. Other data as required by the Board of Education.

8VAC20-543-600. Reading specialist.

A. The reading specialist program shall ensure that the candidate has completed at least three years of successful classroom teaching experience in a public or accredited nonpublic school and has demonstrated the following competencies:

1. Assessment and diagnostic teaching. The candidate shall:
 - a. Demonstrate expertise in the use of formal and informal screening, diagnostic, and progress monitoring assessment for language proficiency, concepts of print, phonemic awareness, letter recognition, decoding, fluency, vocabulary, reading levels, and comprehension; and
 - b. Demonstrate expertise in the ability to use diagnostic data to inform instruction for acceleration, intervention, remediation, and differentiation.
2. Communication: speaking, listening, media literacy. The candidate shall:
 - a. Demonstrate expertise in the knowledge, skills, and processes necessary for teaching communication, such as speaking, listening, and media literacy;
 - b. Demonstrate expertise in developing students' phonological awareness skills;
 - c. Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects;
 - d. Demonstrate an understanding of the unique needs of students with language differences and delays;
 - e. Demonstrate the ability to promote creative thinking and expression, such as through storytelling, drama, and choral and oral reading; and
 - f. Demonstrate the ability to teach students to identify the characteristics of, and apply critical thinking to, media messages and to facilitate their proficiency in using various forms of media to collaborate and communicate.

3. Reading. The candidate shall:

- a. Demonstrate expertise in explicit and systematic phonics instruction, including an understanding of sound and symbol relationships, syllables, phonemes, morphemes, decoding skills, word analysis, and word attack skills;
- b. Demonstrate expertise in the morphology of English including inflections, prefixes, suffixes, roots, and word relationships;
- c. Demonstrate expertise in strategies to increase vocabulary;
- d. Demonstrate expertise in the structure of the English language, including and understanding of syntax, semantics, and vocabulary development;
- e. Demonstrate expertise in reading comprehension strategies, including a repertoire of questioning strategies, understanding the dimensions of word meanings, teaching predicting, inferencing, summarizing, clarifying, evaluating, and making connections;
- f. Demonstrate expertise in the ability to teach strategies in literal, interpretive, critical, and evaluative comprehension;
- g. Demonstrate the ability to develop comprehension skills in all content areas;
- h. Demonstrate the ability to foster appreciation of a variety of literature;
- i. Understand the importance of promoting independent reading and reading strategically through a variety of means including by selecting fiction and nonfiction texts of appropriate yet engaging topics and reading levels; and
- j. Demonstrate effective strategies for teaching students to view, interpret, analyze, and represent information and concepts in visual form with or without the spoken or written word.

4. Writing. The candidate shall:

- a. Demonstrate expertise in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing and written expression and usage and mechanics and the writing process of planning, drafting, revising, editing, and sharing;
- b. Demonstrate expertise in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling," orthographic patterns, and strategies for promoting generalization of spelling study to writing; and

- c. Demonstrate expertise to teach the writing process: plan, draft, revise, edit, and share in the narrative, descriptive, and explanative modes.

5. Technology. The candidate shall demonstrate expertise in their use of technology for both process and product as they work to guide students with reading, writing, and research.

6. Leadership, coaching, and specialization. The candidate shall:

- a. Demonstrate an understanding of developmental psychology, including personality and learning behaviors;
- b. Demonstrate an understanding of the needs of high achieving students and of strategies to challenge them at appropriate levels;
- c. Demonstrate an understanding of the significance of cultural contexts upon language;
- d. Demonstrate an understanding of varying degrees of learning disabilities;
- e. Demonstrate expertise with educational measurement and evaluation, including validity, reliability, and normative comparisons in test design and selections;
- f. Demonstrate expertise to interpret grade equivalents, percentile ranks, normal curve equivalents, and standards scores;
- g. Demonstrate the ability to instruct and advise teachers in the skills necessary to differentiate reading instruction for both low and high achieving readers;
- h. Demonstrate the ability to coach and support teachers through classroom observations, demonstrations, co-teaching, and other forms of job-embedded professional development;
- i. Demonstrate the ability to organize and supervise the reading program within the classroom, school, or division;
- j. Demonstrate effective communication skills in working with a variety of groups, including parents, teachers, administrators, and community leaders;
- k. Demonstrate knowledge of current research and exemplary practices in English and reading;
- l. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing;
- m. Understanding of and proficiency in pedagogy to incorporate writing as an instructional and assessment tool for candidates to generate, gather, plan, organize, and present ideas in writing to communicate for a variety of purposes; and

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n. Complete a supervised practicum or field experience in the diagnosis and remediation of reading difficulties in a public or accredited nonpublic school.

B. Each education preparation program offered by a public institution of higher education or private institution of higher education that leads to a degree, concentration, or certificate for reading specialists shall include a program of coursework and other training in the identification of and the appropriate interventions, accommodations, and teaching techniques for students with dyslexia or a related disorder. Such program shall (i) include coursework in the constructs and pedagogy underlying remediation of reading, spelling, and writing and (ii) require reading specialists to demonstrate mastery of an evidence-based, structured literacy instructional approach that includes explicit, systematic, sequential, and cumulative instruction.

VA.R. Doc. No. R21-5987; Filed August 20, 2020, 11:54 a.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Proposed Regulation

Title of Regulation: 8VAC40-31. Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (amending 8VAC40-31-10, 8VAC40-31-160).

Statutory Authority: § 23.1-215 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 14, 2020.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-0571, or email beverlyrebar@schev.edu.

Basis: Section 23.1-215 of the Code of Virginia authorizes the State Council of Higher Education for Virginia to adopt, pursuant to the Administrative Process Act, such regulations as may be necessary to implement the provisions of this chapter.

Section 23.1-230 of the Code of Virginia charges the council to determine the required disclosures for enrollment agreements.

Purpose: Chapter 289 of the 2017 Acts of Assembly requires the council to create requirements for an enrollment agreement that will be used by institutions certified by the council to operate in Virginia. The new regulatory language benefits both regulated institutions and students enrolled in those schools. The institution will be protected by requiring students to acknowledge that the school has provided student protection disclosures prior to enrollment, and the student is

protected by receiving these disclosures, in writing, prior to enrollment.

Substance: The proposed amendments define "enrollment agreement" and establish the required elements of the enrollment agreement.

Issues: The primary advantage to institutions is that they will have one place to disclose all required information to students. The school will have proof that it has provided this information when the student signs the document, either physically or electronically. The student benefits from the enrollment agreement because important information regarding items such as the right to cancel or refund policies are all disclosed in one place.

The disadvantage to a school is the need to create an enrollment agreement if the school currently does not have one. There is no disadvantage to the student.

The advantage to the agency is assurance that students are properly advised of the student protections they are entitled to when they sign on to attend a school. There is no disadvantage to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 298 of the 2017 Acts of Assembly,¹ the State Council of Higher Education for Virginia (SCHEV) proposes a number of disclosures to be included in the enrollment agreement signed by the student and by an authorized representative of the school.

Background. Chapter 298 of the 2017 Acts of Assembly requires all postsecondary schools certified by SCHEV² to enter into an enrollment agreement with students and directs SCHEV to prescribe disclosures to be included in such an agreement. Accordingly, SCHEV proposes a number of disclosures to be included in such an agreement including transferability of credits to other institutions, right to cancellation, refund policies, and the grievance process.

Estimated Benefits and Costs. The proposed regulation will make sure that students are provided with information on transferability of credits to other institutions, right to cancellation, refund policies, and the grievance process and that the school will have evidence that it has provided such information to the students. The main benefit of such disclosures is to make sure all parties have the same access to information and allow them to make informed decisions.

The proposed regulation, however, is unlikely to have a significant economic impact upon promulgation for two reasons. First, SCHEV has always encouraged institutions to have enrollment agreements as a best practice. As a result, at least 90% of regulated institutions are estimated to currently have enrollment agreements.³ Second, those that do not have enrollment agreements are not expected to incur significant

costs to provide disclosures because they likely readily have the information to be disclosed. For example, some of the information that is to be disclosed is already disclosed to students by other means (such as in a catalog) or they are already available on other agency websites (such as pass rates for first time test takers for nursing licensure), or the school already has an existing policy on the issue. Therefore, provision of required disclosures should not impose significant costs on the schools.

Businesses and Other Entities Affected. There are approximately 300 regulated postsecondary institutions in Virginia. In 2018, there were 38,476 new students enrolled in those institutions. No regulated postsecondary institutions appear to be disproportionately affected.

Small Businesses⁴ Affected.

Types and Estimated Number of Small Businesses Affected: Approximately 80 of the 300 regulated postsecondary institutions may be small businesses.⁵

Costs and Other Effects. The proposed amendments would require regulated postsecondary institutions to disclose certain information to the students. However, since most of the schools already have enrollment agreements with students and those that do not have such agreements readily have the information that would need to be disclosed, the proposed amendments do not appear to have a significant adverse impact.⁶

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not appear to have a significant adverse impact.

Localities⁷ Affected.⁸ The proposed regulation applies statewide. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected. No impact on real estate development costs is expected.

¹<https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0298&171+ful+CHAP0298>

²These postsecondary schools subject to certification are private institutions and generally offer two-year programs such as Strayer University, DeVry University, Bryant and Stratton College, etc. A list of these postsecondary institutions can be found under "Private and Out of State College & Universities Certified to Operate in Virginia" at <https://www.schev.edu/index/students-and-parents/explore/virginia-institutions>.

³Source: SCHEV

⁴Pursuant 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."

⁵Data source: Virginia Employment Commission

⁶Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁷"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The State Council of Higher Education for Virginia concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments add (i) the definition of "enrollment agreement" and (ii) the requirements for the enrollment agreement between students and regulated institutions mandated by Chapter 298 of 2017 Acts of Assembly

Part I

Definitions; Prohibitions; Advertising

8VAC40-31-10. Definitions.

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

"Academic credit" means the measure of the total time commitment an average student is expected to devote to learning per week of study. Generally, one unit of credit represents a total of three hours per week of in-class and out-of-class work (Carnegie Unit of Credit). In this context, an hour is defined as 50 minutes. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" means a noncollege degree school that offers degree and nondegree credit courses at a site in Virginia or via telecommunications equipment located in Virginia.

"Accreditation" means a process of external quality review used by higher education to scrutinize colleges, universities, and educational programs for quality assurance and quality improvement. This term applies to those accrediting organizations recognized by the United States Department of Education.

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"Adjunct faculty" means professional staff members of businesses, industries, and other agencies and organizations who are appointed by institutions and schools on a part-time basis to carry out instructional, research, or public service functions.

"Administrative capability" means a branch (i) maintains or has access to all records and accounts; (ii) has an administrator; (iii) offers courses that consist of a large number of unit subjects that comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis; and (iv) provides student services, including ~~but not limited to~~ financial aid, admissions, career placement assistance, or registration.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker, or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.

"Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a hobby or courses or programs that prepare individuals to teach such pursuits.

"Branch" means an additional location, operated by a school with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Career-technical school" means a school that does not offer courses for degree credit at a site in Virginia or via telecommunication equipment located in Virginia; same as academic-vocational school.

"Certificate" means the credential awarded by a school upon the successful completion of a program that consists of one or more technical courses, usually completed in less than 26 weeks, normally with a single skill objective.

"Certification" means the process of securing authorization to operate a private or out-of-state postsecondary school or institution of higher education ~~and/or~~ or degree, certificate, or diploma program in the Commonwealth of Virginia.

"Change of ownership" means the change in power within a school. Change of ownership may include, ~~but is not limited to~~, the following situations: (i) sale of the school; (ii) merger of two or more schools if one of the schools is nonexempt; or (iii) change from profit to nonprofit or collective.

"CIP code" means the six-digit number assigned to each discipline specialty in the Classification of Instructional Programs (CIP) taxonomy maintained by the National Center for Education Statistics.

"Clock ~~(or contact)~~ hour" or "contact hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"College" means any institution of higher education that offers degree programs.

"Conditional certification" means a status that may be granted by the council to a school certified to operate in Virginia to allow time for the correction of major deficiencies or weaknesses identified in the school's administration that are of such magnitude that, if not corrected, may result in the suspension or revocation of the school's certificate to operate. During a period of conditional certification, a school may not enroll new students or confer any degrees, diplomas, or certificates.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Course registration materials" means any official documents provided to students for the purpose of formal enrollment into the school, a specific program, or a certain course.

"Credit" means (i) the quantitative measurement assigned to a course generally stated in semester hours, quarter hours, or clock hours or (ii) the recognition awarded upon successful completion of coursework.

"Credit hour" means a unit by which a school may measure its coursework. The number of credit hours assigned to a traditionally delivered course is usually defined by a combination of the number of hours per week in class, the number of hours per week in a laboratory, ~~and/or~~ or the number of hours devoted to externship multiplied by the number of hours in the term. One unit of credit is usually equivalent to, at a minimum, one hour of classroom study and outside preparation, two hours of laboratory experience, or three hours of internship or practicum, or a combination of the three multiplied by the number of weeks in the term. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level that represents satisfactory completion of the requirements of

a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" means an award that represents a level of educational attainment at or below the associate degree level and that normally consists of up to (i) 1,500 clock hours, (ii) 90 quarter hours, or (iii) 60 semester hours.

"Distance education" means education that uses the Internet, one-way transmission and two-way transmission through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications; audio conferencing; or video cassettes, DVDs, and CD-ROMs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between student and instructor.

"Enrollment agreement" means a legally binding document signed by a student and an authorized representative of an institution, prior to the time instruction begins that contains required disclosures, a completed copy of which is given to the student upon execution.

"Existing institution" or "existing postsecondary school" means any postsecondary school that either (i) has been in operation in Virginia for two or more calendar years as of July 1, 2004, and has been certified to operate continuously during that period or (ii) has been approved to operate as a postsecondary school in another state, is accredited by an accrediting agency recognized by the United States Department of Education, and is certified to operate in Virginia.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with a school; (ii) principal employment is with that school; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"Graduate credit hours" means credits hours earned for successful completion of courses beyond the baccalaureate level, generally awarded at the 500 series and above.

"Gross tuition collected" means all fees collected or received on either a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books that have been purchased by, and are the property of, the student.

"In-state institution" means an institution of higher education that is formed, chartered, or established within

Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) the institution has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) the institution produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution of higher education" or "institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level that has received certification from the council and either: (i) offers courses or programs of study or instruction that lead to, or that may reasonably be understood to be applicable to, a degree; (ii) operates a facility as a college or university or other entity of whatever kind that offers degrees or other indicia of level of educational attainment beyond the secondary school level; (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business; or (iv) offers approved courses of degree credit or programs of study leading to a degree or offers degrees either at a site in Virginia or via telecommunications equipment located within Virginia.

"Instructional faculty" means a person employed by a school who is engaged in instructional, research, or related activities.

"Instructional site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) lacks administrative capability.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by council.

"New institution" or "new postsecondary school" means any postsecondary school that seeks certification and has been in operation in Virginia for less than two calendar years as of July 1, 2004, and has neither operated in another state as a postsecondary institution nor has been approved to operate in another state as a postsecondary institution.

"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree at a site in Virginia or via telecommunications equipment located within Virginia. Such schools may be academic-career-technical or career-technical.

"Out-of-state institution" means an institution of higher education that is formed, chartered, established, or incorporated outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with a school and (ii) course load of teaching assignments is of lesser quantity than that expected of a full-

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time faculty member ~~and/or~~ or is of lesser quantity than the school's definition of a full load of courses.

"Postsecondary education" means the provision of formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or equivalent or who are beyond the age of compulsory high school attendance. It includes programs of an academic, career-technical, and continuing professional education purpose, and excludes avocational and adult basic education programs.

"Postsecondary education activities" means researching, funding, designing, ~~and/or~~ or conducting instructional programs, classes, or research opportunities, designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance.

"Postsecondary school" or "school" means any entity offering formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance, and for which tuition or a fee is charged. Such schools include programs of academic, career-technical, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.

"Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in Virginia providing education or training for tuition or a fee that (i) augments a person's occupational skills; (ii) provides a certification; or (iii) fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Any entity that offers programs beyond the secondary school level, including programs using alternate modes of delivery, shall be included in this definition so long as tuition and fees from such programs constitute any part of its revenue.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Provisional certification" means a preliminary approval status granted by the council to a new school applicant that

has demonstrated substantial compliance with the provisions of this chapter pursuant to § 23-276 of the Code of Virginia. Such a status may include any conditions imposed by the council to ensure compliance with the provisions of this chapter. The provisionally certified school must demonstrate compliance with all conditions within one calendar year of the initial grant of provisional certification.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit issued by a surety company or banking institution authorized to transact business in Virginia adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Teach-out agreement" means the process whereby a closed or closing school undertakes to fulfill its educational and contractual obligations to currently enrolled students.

"Telecommunications activity" means any course offered by a postsecondary school or consortium of postsecondary schools where the primary mode of instructional delivery is by television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"Unearned tuition" means the portion of tuition charges billed to the student but not yet earned by the institution; the unearned tuition represents future educational services to be rendered to presently enrolled students.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational" means a noncollege degree school that offers only noncollege credit courses. Such schools have programs of instruction offering a sequence of courses that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Vocational education shall not include instructional programs intended solely for recreation, enjoyment, personal interest, or as a hobby, or courses or programs that prepare individuals to teach such pursuits.

8VAC40-31-160. Certification criteria for all postsecondary schools.

A. The criteria in this section shall apply to all postsecondary schools for which certification is required. With regard to postsecondary schools that are accredited by an accrediting agency recognized by the U.S. Department of Education, the council may apply a presumption of compliance with criteria in this section if the school has complied with an accreditation standard directed to the same subject matter as the criteria. The council need not apply this presumption if the accreditation standard is deficient in satisfying an identifiable goal of the council. The council

shall articulate reasons that the accreditation standard is deficient.

B. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;
2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;
3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;
4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, and a list of all program areas in which courses are offered away from the principal location;
5. A list of all locations in Virginia at which the postsecondary school offers courses and a list of the degree and nondegree programs currently offered or planned to be offered in Virginia;
6. For each Virginia location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students who were enrolled in each program offered;
7. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year; and
8. For unaccredited institutions of higher education and career-technical schools only, the total number of students who report employment in their field of study within (i) six months of completion or graduation and (ii) one year of completion or graduation.

C. The postsecondary school or branch shall have a current, written document available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the school;
2. The chief operating officer, president, or director at that branch in Virginia;
3. The principal administrators and their credentials at that branch in Virginia; and

4. The students, if students participate in school governance.

D. The postsecondary school shall have, maintain, and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for admission to the school and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school that are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;
2. The criteria for acceptance of transfer credit where applicable;
3. The criteria for refunds of tuition and fees;
4. Students' rights, privileges, and responsibilities; and
5. The established grievance process of the school, which shall indicate that students should follow this process and may contact council staff to file a complaint about the school as a last resort. The written policy shall include a provision that students will not be subjected to adverse actions by any school officials as a result of initiating a complaint.

E. The postsecondary school shall maintain records on all enrolled students. At a minimum, these records shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained by the school, its successors, or its assigns for a minimum of three years after the student's last date of attendance.

2. An original agreement titled "Student Enrollment Agreement" signed by the student and an authorized representative of the school. The use of electronic signatures is permissible so long as the use complies with § 59.1-479 of the Code of Virginia. A copy of the completed enrollment agreement shall be given to the student upon execution.

a. At the time of enrollment, the agreement shall contain, at a minimum:

(1) Student name, address, and phone number;

(2) Institution name, address, and phone number;

(3) Name of the educational program, start date, and the total number of credit hours or clock hours to complete the program of study and type of credential awarded upon completion (certificate, diploma, or degree);

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(4) Estimated cost of all institutional charges and fees including tuition, fees, equipment charges, supplies, textbooks, and uniforms;

(5) The institution's refund policy, which must be in compliance with subsection N of this section;

(6) A labeled section titled "STUDENT'S RIGHT TO CANCEL" that shall provide the terms for cancellation. Specifically:

(a) The school shall provide a period of at least three business days, excluding weekends and holidays, by which the student applicant must cancel in order to receive refund of all moneys paid less a nonrefundable fee not to exceed \$100. The actual date by which the student applicant must cancel shall be specified in the agreement.

(b) The school shall disclose that following the cancellation period, a student applicant may cancel his enrollment agreement, by written notice, at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school will refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100, whichever is less;

(7) A notice stating that the transferability of credit and credentials earned is at the sole discretion of the receiving institution;

(8) For enrollees in programs leading to professional licensure, the school shall disclose annual pass rates for first time test takers for the last three years, if applicable. If results are not available, the school must provide a written explanation. This disclosure must be signed by the student;

(9) A statement informing students of the institution's grievance policy;

(10) A statement informing students that the institution is certified to operate by SCHEV and providing full contact information for council;

(11) A statement that reads: "By signing below, I certify that I have been provided access to the institution's electronic or print catalog, bulletin, or brochure.";

(12) A statement that reads: "I understand that this is a legally binding agreement. My signature below certifies that I have read, understood, and agreed with my rights and responsibilities. Further, I certify that I understand the institution's cancellation and refund policies and I understand and agree to these policies."; and

(13) Following the statement in subdivision E 2 a (12) of this section, the document provides places for signatures

of the student and authorized representative of the school and date the document was signed.

b. A new enrollment agreement must be completed in the event that the student (i) delays his start date, (ii) changes the program of enrollment, or (iii) drops from the program and re-enrolls at a later date.

~~2.~~ 3. A transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in an electronic database with backup by the school, its successors, or its assigns.

~~3.~~ 4. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.) must be retained permanently. Any changes or alterations to student records must be accurately documented and signed by an appropriate school official.

~~4.~~ 5. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance. When tuition and fees are paid by the student in installments, a clear disclosure of truth-in-lending statement must be provided to and signed by the student.

~~5.~~ 6. The school shall make the documents referenced in subdivisions 1 through 4 ~~5~~ of this subsection available to the student upon request. Academic transcripts shall be provided upon request if the student is in good financial standing.

F. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing, at a minimum, the following information:

1. The number of students enrolled in each program offered.

2. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year.

3. A description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.

4. A broad description, including academic or career-technical objectives of each program offered, the number

of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.

5. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.

6. The school's refund policy for tuition and fees pursuant to subsection N of this section.

7. The school's procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his initiation of a complaint proceeding.

8. The name and address of the school's accrediting body, if applicable.

9. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates or diplomas.

10. A statement that accurately describes the transferability of any courses.

11. A statement that accurately represents the transferability of any diplomas, certificates, or degrees offered by the school.

12. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational or technical programs and that credits generally earned in these programs are not applicable to other degrees.

13. The academic or course work schedule for the period covered by the publication.

14. A statement that accurately details the type and amount of career advising and placement services offered by the school.

15. The name, location, and address of the main campus, branch, or instructional site operating in Virginia.

G. The school must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Evaluation of school effectiveness must be completed on a regular basis and must include, ~~but not be limited to:~~

1. An explanation of how each program is consistent with the mission of the school.

2. An explanation of the written process for evaluating each degree level and program, or career-technical program, once initiated and an explanation of the procedures for assessing the extent to which the educational goals are being achieved.

3. Documented use of the results of these evaluations to improve the degree and career-technical programs offered by the school.

H. Pursuant to § 23-276.3 B of the Code of Virginia, the school must maintain records that demonstrate it is financially sound; exercises proper management, financial controls, and business practices; and can fulfill its commitments for education or training. The school's financial resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the USDOE Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited, reviewed, or compiled financial statement. Career-technical schools shall provide the results of an annual audited, reviewed or compiled financial statement or the school may elect to provide financial information on forms provided by council staff. The financial report shall be prepared in accordance with generally accepted accounting principles (GAAP) currently in effect. The financial report shall cover the most recent annual accounting period completed.

2. The USDOE composite score range is -1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection I of this section; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

I. Pursuant to § 23-276.3 B of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia that is adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the non-Title IV funds that have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in an audited financial statement as a Current (non-Title IV) Tuition Liability. A school certified under this regulation shall be exempt from the surety instrument requirement if it can demonstrate a USDOE composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years. The school's eligibility for the surety waiver shall be determined annually, at the time of recertification.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or instructional site in the Commonwealth of Virginia are exempt from the surety bond requirement.

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2. New schools and unaccredited existing schools must complete at least five calendar years of academic instruction or certification to qualify for the surety waiver or exemption.

3. Existing schools seeking a waiver of the surety instrument requirement must submit an audited financial statement for the most recent fiscal year end that reflects the appropriate composite score as indicated in this subsection.

J. The school shall have a current written policy on faculty accessibility that shall be distributed to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside a course's regularly scheduled class hours at each branch and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.
2. No school, agent, or admissions personnel shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

L. All programs offered via telecommunications or distance education must be comparable in content, faculty, and resources to those offered in residence and must include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings. Telecommunication programs and courses shall adhere to the following minimum standards:

1. The educational objectives for each program or course shall be clearly defined, simply stated, and of such a nature that they can be achieved through telecommunications.
2. Instructional materials and technology methods must be appropriate to meet the stated objectives of the program or course. The school must consider and implement basic online navigation of any course or program, an information exchange privacy and safety policy, a notice of minimum technology specification for students and faculty, proper system monitoring, and technology infrastructure capabilities sufficient to meet the demands of the programs being offered.
3. The school shall provide faculty and student training and support services specifically related to telecommunication activities.
4. The school shall provide for methods for timely interaction between students and faculty.
5. The school shall develop standards that ensure that accepted students have sufficient background, knowledge,

and technical skills to successfully undertake a telecommunications program.

M. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purpose and enrollment of the school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and selections of materials. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. In accordance with § 23-276.3 B of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Each school shall establish, disclose, and utilize a system of tuition and fee charges for each program of instruction. These charges shall be applied uniformly to all similarly circumstanced students. This requirement does not apply to group tuition rates to business firms, industry, or governmental agencies that are documented by written agreements between the school and the respective organization.

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subdivision 2 of this subsection, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program.
2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.
3. The school shall provide a period of at least three business days, excluding weekends and holidays, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.
4. Following the period described in subdivision 3 of this subsection, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his

enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100, whichever is less. A student applicant will be considered a student as of the first day of classes.

5. The date of the institution's determination that the student withdrew should be no later than 14 calendar days after the student's last date of attendance as determined by the institution from its attendance records. The institution is not required to administratively withdraw a student who has been absent for 14 calendar days. However, after 14 calendar days, the institution is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to have withdrawn, the end of the 14-day period begins the timeframe for calculating the refunds. In the event that a written notice is submitted, the effective date of termination shall be the date of the written notice. The school may require that written notice be transmitted via registered or certified mail, or by electronic transmission provided that such a stipulation is contained in the written enrollment contract. The school is required to submit refunds to individuals who have terminated their status as students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner. An institution that provides the majority of its program offerings through distance learning shall have a plan for student termination, which shall be provided to council staff for review with its annual or recertification application.

6. In the case of a prolonged illness or accident, death in the family, or other special circumstances that make attendance impossible or impractical, a leave of absence may be granted to the student if requested in writing by the student or designee. No monetary charges or accumulated absences may be assessed to the student during a leave of absence. A school need not treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if:

- a. The school has a formal, published policy regarding leaves of absence;
- b. The student followed the institution's policy in requesting the leave of absence and submits a signed, dated request with the reasons for the leave of absence;
- c. The school determines that there is a reasonable expectation that the student will return to the school;
- d. The school approved the student's request in accordance with the published policy;

e. The school does not impose additional charges to the student as a result of the leave of absence;

f. The leave of absence does not exceed 180 days in any 12-month period; and

g. Upon the student's return from the leave of absence, the student is permitted to complete the coursework he began prior to the leave of absence.

7. If a student does not resume attendance at the institution on or before the end of an approved leave of absence, the institution must treat the student as a withdrawal, and the date that the leave of absence was approved should be considered the last date of attendance for refund purposes.

8. The minimum refund policy for a school that financially obligates the student for a quarter, semester, trimester, or other period not exceeding 4-1/2 calendar months shall be as follows:

a. For schools that utilize an add/drop period, a student who withdraws during the add/drop period shall be entitled to 100% refund for the period.

b. For unaccredited schools and schools that do not utilize an add/drop period:

(1) A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(2) A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(3) A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.

9. The minimum refund policy for a school that financially obligates the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:

a. A student who enters the school but withdraws or is terminated during the first quartile (25%) of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

b. A student who withdraws or is terminated during the second quartile (more than 25% but less than 50%) of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

c. A student who withdraws or is terminated during the third quartile (more than 50% but less than 75%) of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

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d. A student who withdraws after completing more than three quartiles (75%) of the program shall not be entitled to a refund.

10. The minimum refund policy for a school that offers its programs completely via telecommunications or distance education shall be as follows:

a. For a student canceling after the 5th calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.

b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:

(1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.

(2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.

c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.

d. If the school uses standard enrollment terms, such as semesters or quarters, to measure student progress, the school may use the appropriate refund policy as provided in subdivision 8 or 9 of this subsection.

11. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

12. Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges,

deposits, and all other charges are not required to be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents, prior to enrollment in the course or program. The school shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund.

13. For programs longer than one year, the policy outlined in subdivisions 9, 10, and 11 of this subsection shall apply separately for each academic year or portion thereof.

14. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

15. When notes, contracts or enrollment agreements are sold to third parties, the school shall continue to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have been remitted to the school by the student or on behalf of the student.

O. The school shall keep relevant academic transcripts for all teaching faculty to document that each has the appropriate educational credentials in the area of teaching responsibility. In the event teaching qualification is based on professional competencies or scholarly achievements, relevant documentation to support reported experience must be retained by the school.

P. If an internship, externship, or production work is necessary as a part of the school's education program, the school must adhere to the following:

1. When programs contain internships or externships, in any form, the professional training must:

a. Be identified as part of the approved curriculum of the school and be specified in terms of expected learning outcomes in a written training plan.

b. Be monitored by an instructor of record during the entire period of the internship.

c. Not be used to provide labor or as replacement for a permanent employee.

d. Be performed according to a specified schedule of time required for training including an expected completion date.

e. If the internship, externship, or production work is part of the course requirement, the student may not be considered as a graduate or issued a graduation credential until the internship, externship, or production work has been satisfactorily completed.

2. When receiving compensation for services provided by students as part of their education program, the school

must clearly inform customers that services are performed by students by (i) posting a notice in plain view of the public or (ii) requiring students to wear nametags that identify them as students while performing services related to their training.

Q. An institution shall notify council staff of the following occurrences no later than 30 days prior to said occurrence:

1. Addition of new programs or modifications to existing program. Program names must adhere to the CIP taxonomy maintained by the National Center for Education Statistics.
2. Addition of a new branch location or instructional site.
3. Address change of a branch or instructional site in Virginia.

Notification of the ~~above-referenced~~ occurrences in this subsection shall be submitted in writing on forms provided by and in a manner prescribed by the council.

R. An institution shall notify the council of the following occurrences no later than 30 days following said occurrence.

1. Naming of new school president.
2. Naming of new campus or branch director.
3. Naming of person responsible for the regulatory oversight of the institution.

VA.R. Doc. No. R19-5154; Filed August 18, 2020, 2:23 p.m.

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TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

Title of Regulation: 11VAC10-47. Historical Horse Racing (adding 11VAC10-47-10 through 11VAC10-47-200).

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

Effective Date: October 14, 2020.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The action establishes regulations to implement Chapter 811 of the 2018 Acts of Assembly, which authorizes historical horse racing at facilities licensed by the Virginia Racing Commission throughout the Commonwealth of Virginia. The requirements for an entity licensed to conduct pari-mutuel wagering on historical horse racing include (i) the location and hours of operation, (ii) types and specifications of the terminals to be utilized, (iii)

accounting and auditing, (iv) permits required for licensee employees, (v) simulcast operations, (vi) annual reporting, and (vii) implementation by a licensee of a program to promote responsible gaming and the minimum requirements for such a program.

Changes to the proposed regulation implement requirements of Chapter 1197 of the 2020 Acts of Assembly, which add a new maximum number of terminals, increase the tax rate to the Commonwealth and localities, allow one additional live day for every 100 new terminals, and, as of March 1, 2020, require that terminals installed in locations must not be more than 40% by any single manufacturer.

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

CHAPTER 47 HISTORICAL HORSE RACING

11VAC10-47-10. Definitions.

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

"Act" means Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Applicant" means an individual who has submitted an application to obtain a license to offer pari-mutuel wagering on historical horse racing from the commission.

"Commission" means the Virginia Racing Commission.

"Historical horse racing" means a form of horse racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and is hosted at (i) a racetrack owned or operated by a significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a significant infrastructure limited licensee or (b) the nonprofit industry stakeholder organization recognized by the commission and licensed to own or operate such satellite facility.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with this chapter and to otherwise perform the functions assigned to it by this chapter. An independent testing laboratory shall not be owned or controlled by a licensee, the state, or any manufacturer, supplier, or operator of historical horse racing terminals.

"Integrity auditor" means a company that conducts periodic and regular tests on the validity of pari-mutuel wagering, deductions, and payouts for the applicable historical horse racing event, including the legitimacy of the event itself, and tests that the order of finish of the race selected in the game is valid, match to the order of finish that occurred empirically.

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and that all runners that were listed as entered into the race for the purposes of the game, legitimately ran in the race.

"Licensee" means any person holding an owner's or operator's license under Article 2 (§ 59.1-375 et seq.) of Chapter 29 of the Code of Virginia who is granted a license by the commission under this chapter to conduct pari-mutuel wagering on historical horse racing.

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering and any additional areas designated by the commission for conducting pari-mutuel wagering on historical horse racing.

11VAC10-47-20. Pari-mutuel wagering; generally.

The commission is authorized to issue licenses to (i) holders of a significant infrastructure limited license or (ii) holders of a satellite facility license to conduct pari-mutuel wagering on historical horse racing for the promotion, sustenance, and growth of a native industry, in a manner consistent with the health, safety, and welfare of the people. Pari-mutuel wagering on historical horse racing shall be conducted so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices and to maintain in horse racing complete honesty and integrity. This chapter shall exclusively govern all matters related to pari-mutuel wagering on historical horse racing.

11VAC10-47-30. Observance of regulations.

A licensee shall be charged with the observance and compliance with the act and the regulations of the commission.

11VAC10-47-40. Requirements for wagering on historical horse racing.

A. In accordance with the act, wagering on a historical horse race shall only be conducted by:

1. A significant infrastructure limited licensee; or
2. A satellite facility licensee.

B. Wagering on historical horse racing may only take place at a licensed significant infrastructure facility or a licensed satellite facility.

C. A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the licensee.

D. The minimum wager to be accepted by any licensee on the outcome of a historical horse race shall be \$.10. The minimum payout on any wager shall not be less than the amount wagered.

E. Any wager placed on a historical horse race is a multiple wager.

F. The terminal may display the wager and its outcome as part of an entertaining display or game, provided the wager functions according to the pari-mutuel wagering pool specifications provided by the licensee to and approved by the commission. A licensee may not offer a new display or game without prior approval of the commission as set forth in this chapter.

G. All wagering on a historical horse race shall incorporate the following elements:

1. A patron may only wager on a historical horse race on a terminal approved by the commission;

2. A licensee shall at all times maintain at least two terminals offering wagering on historical horse races for each pool and minimum wager denomination;

3. Prior to the patron making wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which the patron is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys who rode the horses in the race;

4. The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to the patron making wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

5. After a patron finalizes wager selections, the terminal shall display the official results of the race and a replay of the race, or a portion thereof, whether by digital, animated, or graphical depiction or by way of a video recording. The identity of the race shall be revealed to the patron after the patron has placed a wager.

11VAC10-47-50. Location and hours of operation of terminals used for wagering on historical horse racing.

A. Pari-mutuel wagering on historical horse races shall only be permitted in designated areas that have the prior written approval of the commission and are on the premises of a significant infrastructure limited licensee or satellite facility licensee.

B. A licensee shall request permission from the commission to alter the physical layout of the area permitted for historical horse racing.

C. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is younger than 18 years of age or is otherwise not permitted to place wagers.

D. The designated area shall provide terminals that are accessible to handicapped persons.

E. A licensee may conduct pari-mutuel wagering on historical horse races on days and hours approved by the commission.

11VAC10-47-60. Payouts from pari-mutuel pools generated by wagering on historical horse racing.

A. A wager on a historical horse race, less deductions permitted by the act, shall be placed in pari-mutuel pools approved by the commission.

B. A licensee shall provide guaranteed funding for all historical horse race pools offered by the licensee. This guarantee shall be in the form of a letter of credit, bond with surety, or other instrument of financial security in an amount and form approved by the commission sufficient to cover outstanding vouchers together with any indebtedness incurred by the licensee to the Commonwealth.

C. A licensee offering wagering on a historical horse race shall maintain pari-mutuel pools for each wager in a manner and method approved by the commission. The pari-mutuel pools shall be maintained and funded in a method approved by the commission to ensure that the amount available in the pari-mutuel pools at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

D. All prizes awarded from a historical horse race wager shall be awarded from an existing pari-mutuel pool. The money in the pool shall only consist of money wagered by patrons or allocated to the pari-mutuel pool. Wagers made on a historical horse race shall not constitute a wager against the licensee. Wagers shall not be conducted in a manner in which the amount retained by the licensee is dependent upon the outcome of any particular race or the success of any particular wager.

E. The rules for the mathematical model, configuration of pools, and pool payout methodology shall be described in game specification documentation, which shall be provided by the licensee to the commission.

F. Controls shall be in place to ensure that depletion of a pari-mutuel pool below an amount required to pay all winning tickets shall be detected at the time of depletion, and depletion shall result in the automatic suspension of any wagering activity related to that pool. The commission shall be notified immediately in the event of the suspension of wagering activity of any historical horse racing pool.

11VAC10-47-70. Commission approval of historical horse racing games and displays.

A. A licensee shall submit a written request to the commission for permission to offer a multiple wager on a historical horse race. The written request shall include a detailed description of the rules that apply to the pari-mutuel wager, the method of calculating payouts, and the method by which money will be allocated to the pari-mutuel pool, if

applicable. This documentation shall fully and accurately describe:

1. The method of determining a game outcome;
2. Available wagering denominations;
3. Minimum wager amount;
4. Maximum wager amount;
5. The allocation of wagers into the pari-mutuel pool;
6. The amount of takeout for each wager;
7. The method of calculating winning payouts and breakage, where applicable;
8. Payout calculations set forth in sufficient detail to audit a payout through manual calculation;
9. The minimum payouts and the method of guaranteeing minimum payouts;
10. The method of mapping payouts to an entertaining display on the wagering terminal; and
11. Any other information provided to an independent testing laboratory for use in the testing of the pari-mutuel wagers.

B. For wagering on historical horse racing, approximate odds or payouts for each pool shall be available on each respective terminal for viewing by patrons.

C. In conspicuous places in the designated area, each licensee shall post (i) a general explanation of pari-mutuel wagering offered on historical horse races and (ii) an explanation of each betting pool offered in the terminal menus. The explanation shall be submitted to the commission for approval prior to its posting.

11VAC10-47-80. Equipment required for pari-mutuel wagering on historical horse races.

A. Wagering on historical horse races shall be offered on terminals that include a cabinet in which the electronics and other operating components are located. All terminals and other equipment shall be subject to inspection by the commission.

B. The terminal shall:

1. Protect against electrostatic interference by being grounded so that static discharge energy shall not permanently damage or inhibit the normal operation of the electronics or other components within the wagering terminal. In the event that a temporary disruption of the normal operation of a wagering terminal occurs as a result of an electrostatic discharge, the wagering terminal shall have the capacity to recover and complete any interrupted wager without loss or corruption of any control or critical data information. Each terminal shall be tested to a maximum discharge severity level of 27 kV air discharge;

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2. Not be adversely affected, other than during resets, by surges or dips of up to 20% of the supply voltage. If a wagering terminal is designed such that a surge or dip of up to 20% of the supply voltage causes a reset, the terminal shall also be designed so that a surge or dip shall not result in damage to the equipment or loss or corruption of data. Upon reset, the game shall return to its previous state or return to a game completion state, provided the game history and all credit and accounting meters comprehend a completed game;

3. Have an on/off switch that controls the electrical current installed in a readily accessible location within the interior of the terminal so that power cannot be disconnected from outside of the terminal using the on/off switch. The on/off positions of the switch shall be labeled;

4. Be designed so that power and data cables into and out of the terminal can be routed so that they are not accessible to the general public. Security-related wires and cables that are routed into a logic area shall be securely fastened within the interior of the terminal;

5. Have an identification badge affixed to the exterior of the terminal by the manufacturer that is not removable without leaving evidence of tampering. This badge shall include the following information:

- a. The name of the manufacturer;
- b. A unique serial number;
- c. The terminal model number; and
- d. The date of manufacture;

6. Have an external tower light located conspicuously on the top of the terminal that automatically illuminates when a patron has won an amount that the terminal cannot automatically pay or when an error condition has occurred;

7. Be constructed of materials that are designed to allow only authorized access to the inside of the terminal. The terminal and its locks, doors, and associated hinges shall be capable of withstanding determined and unauthorized efforts to gain access to the inside of the terminal and shall be designed to leave evidence of tampering if such an entry is made;

8. Have seals between the terminal and the doors of a locked area that are designed to resist the use of tools or other objects used to breach the locked area by physical force;

9. Have external doors that shall be locked and monitored by door access sensors. When the external doors are opened, the door access sensors shall (i) cause game wagering activity to cease, (ii) disable all currency acceptance, (iii) enter an error condition, (iv) illuminate the tower light at a minimum, and (v) record the error

condition. The requirements of this subsection do not apply to the drop box door;

10. Have external doors designed so that it shall not be possible to insert a device into the terminal that will disable a "door open" sensor without leaving evidence of tampering when the door of the terminal is shut;

11. Have a sensor system that shall provide notification that an external door is open when the door is moved from its fully closed and locked position, provided power is supplied to the device;

12. Have a logic area, which is a separately locked cabinet area with its own monitored, locked door or other monitored, locked covering that houses electronic components that have the potential to significantly influence the operation of the terminal. There may be more than one such logic area in a terminal. The electronic components housed in the logic area shall include:

- a. A central processing unit and any program storage device that contains software that may affect the integrity of wagering, including the game accounting, system communication, and peripheral firmware devices involved in or that significantly influence the operation and calculation of game play, game display, game result determination, or game accounting, revenue, or security;
- b. Communication controller electronics and components housing the communication program storage device; and
- c. The nonvolatile memory backup device, which if located in the logic area, shall be kept within a locked logic area; and

13. Have a currency storage area that is separately keyed and fitted with sensors that indicate "door open/close" or "stacker receptacle removed," provided power is supplied to the device. Access to the currency storage area shall be secured by two locks before the currency can be removed. The locks shall be located on the relevant outer door and on at least one other door.

C. Critical memory storage shall be maintained by a methodology that enables errors to be identified. This methodology shall include signatures, checksums, partial checksums, multiple copies, timestamps, effective use of validity codes, or any combination of these methods.

D. Comprehensive checks of critical memory shall be made following game initiation but prior to display of game outcome to the patron.

E. An unrecoverable corruption of critical memory shall result in an error state. The memory error shall not be cleared automatically and shall cause the terminal to cease further functioning. The critical memory error shall also cause any communication external to the terminal to immediately cease. An unrecoverable critical memory error shall require

restoration or clearing of software state by an authorized person.

F. If critical memory is maintained in nonvolatile memory on the terminal and not by the server based system, then:

1. The terminal shall have the ability to retain data for all critical memory as defined in this section and shall be capable of maintaining the accuracy of the data for 30 days after power is discontinued from the terminal;

2. For rechargeable battery types only, if the battery backup is used as an off-chip battery source, it shall recharge itself to its full potential in a maximum of 24 hours. The shelf life of the battery shall be at least five years;

3. Nonvolatile memory that uses an off-chip backup power source to retain its contents when the main power is switched off shall have a detection system that will provide a method for software to interpret and act upon a low battery condition before the battery reaches a level where it is no longer capable of maintaining the memory in question. Clearing nonvolatile memory shall require access to the locked logic area or other secure method, provided that the method is approved by the commission; and

4. Following the initiation of a nonvolatile memory reset procedure, the game program shall execute a routine that initializes all bits in critical nonvolatile memory to the default state. All memory locations intended to be cleared as per the nonvolatile memory clear process shall be fully reset in all cases.

G. Critical memory of a server-based game may be maintained by the server, terminal, or some combination thereof. The critical memory related to each terminal shall:

1. Be kept independent to all other wagering terminals. If corruption occurs in any single terminal's critical memory no other terminal shall be effected by the terminal's corrupt memory state; and

2. Be clearly identified as to which physical terminal the critical memory represents, through unique identification, such as serial number or other unique terminal hardware identifier.

H. All terminals shall be equipped with a device, mechanism, or method for retaining the value of the meter information specified in 11VAC10-47-10 in the event of a loss of power to the terminal. Storage and retrieval of the accounting meters from a server is an acceptable method of retrieval.

I. Configuration setting changes shall not cause an obstruction to the meters.

J. If the terminal is in a test, diagnostic, or demonstration mode, any test that incorporates credits entering or leaving the terminal shall be completed prior to resumption of normal

operation. In addition, there shall not be any mode other than normal wagering operation that debits or credits any of the electronic meters. Any wagering credits on the terminal that were accrued during the test, diagnostic, or demonstration mode shall be cleared before the mode is exited. Specific meters are permissible for these types of modes, provided the meters are clearly identified.

K. Terminals shall not allow any information contained in a communication to or from the online monitoring system that is intended to be protected, including validation information, secure PINs, credentials, or secure seeds and keys, to be viewable through any display mechanism supported by the terminal.

L. All program storage devices shall:

1. Be housed within a fully enclosed and locked logic compartment;

2. Validate themselves during each processor reset; and

3. Validate themselves the first time they are used.

M. Program storage devices that do not have the ability to be modified while installed in the terminal during normal operation shall be clearly marked with information to identify the software and revision level of the information stored in the devices.

N. Terminals shall have the ability to allow for an independent integrity check of all software that may affect the integrity of the game. The integrity check shall be by an independent testing laboratory approved by the commission.

1. The independent testing laboratory's software may be embedded within the game software, utilize an interface port to communicate with the terminal, or require the removal of terminal media for external verification.

2. Each terminal used for wagering on historical horse races shall be tested by the independent testing laboratory to ensure its integrity and proper working order. This evaluation shall include a review of installed software prior to implementation and periodically within a timeframe established by the commission.

3. The licensee shall pay the cost of the independent testing laboratory's review and testing, and the reports of the same shall be delivered to the licensee and the commission.

4. To ensure the integrity of pari-mutuel wagering and validity of the race results, the licensee shall permit an integrity auditor, selected and paid for by the commission, complete access to review and monitor the integrity, security, and operation, including all race and handicapping data used in order to detect any compromise of or anomalies that would allow a player to have an unfair advantage.

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5. The integrity auditor shall be in a position to extract actual data and use a statistically significant portion of this data applied to quality assurance testing and assess the validity of the vendor's management reporting by cross-referencing to a body of raw source information to determine correctness. The integrity auditor shall have experience and expertise involving all components of pari-mutuel wagering and totalizator systems.

6. The integrity auditor will collect and provide wagering data and reports from the licensee's vendor. This shall include pari-mutuel commission and liability reports for analysis and verification of the amounts wagered, payouts, takeout, and taxes in addition to all transactional data logs and reports daily as specified by the integrity auditor.

7. The licensee shall provide access to the integrity auditor to conduct periodic onsite inspections and terminal audits at licensed racetracks and satellite wagering facilities with assistance from the vendor. The licensee shall supply advanced notification, when possible, of at least 30 calendar days of all new game products, changes in the composition of the historic horse races in the library, any changes to reporting or the method of provision of those reports, and any adverse or unusual occurrences relating to the operation of play or payouts to the integrity auditor.

O. Winning pari-mutuel wagers shall be processed according to U.S. Internal Revenue Service reporting requirements for the taxation of pari-mutuel horse racing. If a winning amount is in excess of the thresholds established in the Internal Revenue Service reporting requirements, the terminal shall cease operation and require attendant interaction to proceed.

P. Terminals shall be capable of detecting and displaying the following errors:

1. Open door conditions;
2. Nonvolatile memory errors;
3. Low nonvolatile memory battery for batteries external to the nonvolatile memory itself for low power source;
4. Program error or authentication mismatch;
5. Display device errors; and
6. The identification of an invalid bill or voucher.

Q. Detection of terminal error conditions must result in actions to protect the integrity of the game. Following detection of an error condition:

1. The terminal shall secure itself and it shall:
 - a. Cause the terminal to cease play and require attendant intervention prior to returning to normal play;
 - b. Cause the terminal to display an appropriate error message;

c. Disable bill and voucher acceptance;

d. Sound an alarm, illuminate the tower light, display the error on screen, or any combination of the three;

e. Be communicated to an online monitoring and control system;

f. Be displayed on a terminal; and

g. Cause the terminal to remain in error mode if the terminal is powered down with an unresolved error condition, unless power down is used as a part of the error reset procedure.

2. Upon resolution of an error condition, a terminal may return to a wager completion state, provided the game history, wagering credits, and other meters display the completed wager properly.

R. Terminals shall not be adversely affected by the simultaneous or sequential activation of various terminal inputs and outputs.

S. Test, diagnostic, or demonstration modes on a terminal shall:

1. Be entered only from an attendant following appropriate instructions;
2. Not be accessible to a patron; and
3. Be indicated on the terminal via an appropriate message.

T. Upon exiting from test, diagnostic, or demonstration mode, a terminal shall return to its previous state.

U. Video monitor touch screens on terminals shall:

1. Be accurate within one millimeter of the center of a physical input;
2. Be able to be calibrated without access to the terminal cabinet other than opening the main door, and once calibrated shall maintain accuracy for at least the video touch screen manufacturer's recommended maintenance period; and
3. Have no hidden or undocumented buttons or touch points anywhere on the screen that affect wagering or that impact the outcome of the game, except as provided by the game rules.

V. Paper currency acceptors used in a terminal shall:

1. Be electronically based;
2. Detect the entry of bills or vouchers inserted into the paper currency acceptor and provide a method to enable the terminal software to interpret and act appropriately upon a valid or invalid input;
3. Be configured to ensure the acceptance of only valid bills or vouchers and reject all other items;

4. Return to the patron all rejected bills or vouchers, and any other item inserted into the acceptor;

5. Be constructed in a manner that protects against vandalism, abuse, or fraudulent activity;

6. Register the actual monetary value or appropriate number of wagering credits received for the denomination used on the patron's credit meter for each valid bill or voucher;

7. Register wagering credits only when the bill or other note has passed the point where it is accepted or stacked and the acceptor has sent an "irrevocably stacked" message to the terminal;

8. Be designed to prevent the use of fraudulent crediting, the insertion of foreign objects, and any other fraudulent technique;

9. Implement a method of detecting counterfeit bills;

10. Only accept bills or vouchers when the terminal is enabled for play;

11. Have the capability of detecting and displaying any supported error conditions;

12. Shall communicate with the terminal using a bi-directional protocol;

13. Be located in a locked area of the terminal that requires the opening of the main door for access. The paper currency acceptor shall not be located in the logic area. Only the bill or voucher insertion area shall be accessible by the patron;

14. Have a secure stacker that shall:

a. Deposit into the stacker all accepted items;

b. Be attached to the terminal in such a manner that it cannot be easily removed by physical force; and

c. Have a separate keyed lock to access the stacker area. The keyed lock shall be separate from the main door, and a separate keyed lock shall be required to remove the bills from the stacker; and

15. Have a bill validator that shall:

a. Retain in its memory and have the ability to display the information required of the last 25 items accepted by the bill validator;

b. Have a recall log that may be combined or maintained separately by item type. If combined, the type of item accepted shall be recorded with the respective timestamp; and

c. Give proper credit or return the bill or note if power failure occurs during acceptance of a bill or note.

W. Available wagering credit may be collected from the terminal by the patron at any time other than during:

1. A game being wagered;

2. Audit mode;

3. Test mode;

4. A credit meter or win meter increment; or

5. An error condition.

X. Each terminal shall be equipped with a printer that:

1. Is used to make payments to the patron by issuing a printed voucher. The terminal shall transmit the following data to an online system that records the following information regarding each payout ticket or voucher printed:

a. The value of credits in local monetary units in numerical form;

b. The time of day the ticket or voucher was printed in 24-hour format, showing hours and minutes;

c. The date, in format approved by the commission, indicating the day, month, and year that the ticket or voucher was issued;

d. The terminal number; and

e. A unique ticket or voucher validation number.

2. Prints only one copy to the patron and retains information on the last 25 printed vouchers;

3. Is housed in a locked area of the terminal but shall not be located within the logic area or the drop box; and

4. Allows control program software to interpret and act upon all error conditions.

Y. Terminals shall be capable of displaying wager recall, which shall:

1. Include the last 50 wagers on the terminal;

2. Be retrievable on the terminal via an external key-switch or other secure method not available to the patron; and

3. Provide all information required to fully reconstruct the wagers, including:

a. Initial credits or ending credits associated with the wager;

b. Credits wagered;

c. Credits won;

d. Entertaining game display symbol combinations and credits paid whether the outcome resulted in a win or a loss;

e. Representation in a graphical or text format;

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f. Final wager outcome, including all patron choices and all bonus features; and

g. As an optional feature, display of values as currency in place of wagering credits.

Z. Server-stored information shall be backed up no less often than once per day to an offsite storage facility controlled by the licensee. Offsite storage may include storage through a cloud service provider if approved by the commission. The server and offsite backup storage shall be accessible to the commission and subject to third-party checks and validation as provided in subsection N of this section.

[AA. Excluding machines installed as of March 1, 2020, each location operating historical racing terminals shall be prohibited from having more than 40% of its terminals manufactured by any single manufacturer.]

11VAC10-47-90. Requirements for tickets or vouchers used in historical horse racing.

A. Terminals shall not dispense currency. Payment to patrons shall only be accomplished by means of a printed voucher.

B. All vouchers shall contain the following printed information at a minimum:

1. Licensee name and site identifier, which may be contained on the ticket stock itself;
2. Terminal number or cashier booth location;
3. Date and time stated in a 24-hour format according to the local time zone;
4. Alpha and numeric dollar amount;
5. Ticket or voucher sequence number;
6. Validation number;
7. Bar code or any machine-readable code representing the validation number;
8. Type of transaction or other method of differentiating voucher types. If the voucher is a noncashable item, the ticket shall explicitly express that it has "no cash value"; and
9. The expiration period from date of issue, or date and time the ticket or voucher will expire in a 24-hour format according to the local time zone. This information may be contained on the ticket stock itself. Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee within 180 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within 180 days after the purchase of the ticket shall constitute a waiver of the right to payment.

C. A system approved by the commission shall be used to validate the payout ticket or voucher. The ticket or voucher information on the central system shall be retained for two calendar years after a voucher is valid at that location.

D. Payment by voucher as a method of credit redemption shall only be permissible when the terminal is linked to a computerized voucher validation system that is approved by the commission.

E. The validation system must be able to identify a duplicate ticket or voucher to prevent fraud.

F. Terminals must meet the following minimum requirements to incorporate the ability to issue offline vouchers after a loss of communication has been identified by a wagering terminal:

1. The wagering terminal shall not issue more offline vouchers than it has the ability to retain and display in the wagering terminal maintained voucher-out log;
2. The wagering terminal shall not request validation numbers used in the issuance of vouchers until all outstanding offline voucher information has been fully communicated to the voucher validation system;
3. The wagering terminal shall request a new set of validation numbers used in the issuance of online or offline vouchers if the current list of validation numbers has the possibility of being compromised, which shall include:
 - a. After power has been recycled, or
 - b. Upon exit of a main door condition; and
4. Validation numbers must always be masked when viewable through any display supported by the wagering terminal such that only the last four digits of the validation number are visible.

G. Vouchers may be inserted in any terminal participating in the validation system providing that no credits are issued to the terminal prior to confirmation of voucher validity.

H. The offline voucher redemption may be validated as an internal control process at the specific terminal that issued the voucher. A manual handpay may be conducted for the offline voucher value.

11VAC10-47-100. Accounting and occurrence meter requirements.

A. The required accounting meters are as follows:

1. Coin in, which accumulates the total value of all wagers, whether the wagered amount results from the insertion of bills or vouchers or deduction from a credit meter;
2. Coin out, which accumulates the total value of all amounts directly paid by the terminal as a result of winning wagers, whether the payback is made to a credit meter or any other means;

3. Attendant paid jackpot, which accumulates the total value of credits paid by an attendant resulting from a single wager, the amount of which is not capable of being paid by the wagering terminal itself;

4. Attendant paid canceled credit, which accumulates the total value paid by an attendant resulting from a patron-initiated cashout that exceeds the physical or configured capability of the terminal to make the proper payout amount;

5. Bill in, which accumulates the total value of currency accepted. Each wagering terminal shall have a specific occurrence meter for each denomination of currency accepted that records the number of bills accepted of each denomination;

6. Voucher in, which accumulates the total value of all wagering terminal vouchers accepted by the device;

7. Voucher out, which accumulates the total value of all wagering terminal vouchers issued by the device;

8. Noncashable electronic promotion in, which accumulates the total value of noncashable credits from vouchers accepted by the terminal;

9. Cashable electronic promotion in, which accumulates the total value of cashable credits from vouchers accepted by the terminal;

10. Noncashable electronic promotion out, which accumulates the total value of noncashable credits issued to vouchers by the device; and

11. Cashable electronic promotion out, which accumulates the total value of cashable credits issued to vouchers by the device.

B. Additional required occurrence meters are as follows:

1. Cashable promotional credit wagered, which accumulates the total value of promotional cashable credits that are wagered;

2. Games wagered, which accumulates the number of wagers placed; and

3. Games won, which accumulates the number of wagers resulting in a win to the patron.

C. Electronic accounting meters shall maintain and calculate data to at least 10 digits in length.

D. Electronic accounting meters shall be maintained in credit units equal to the denomination or in dollars and cents.

E. If the electronic accounting meter is maintained in dollars and cents, eight digits must be used for the dollar amount and two digits must be used for the cents amount.

F. Devices configured for multi-denomination wagering shall display the units in dollars and cents at all times.

G. Any time the meter exceeds 10 digits or after 9,999,999,999 has been exceeded, the meter must roll over to zero.

H. Occurrence meters shall be at least eight digits in length but are not required to automatically roll over.

I. Meters shall be identified so that they can be clearly understood in accordance with their function.

J. A wagering terminal shall maintain sufficient electronic metering to be able to display the following:

1. The total monetary value of all items accepted on the terminal;

2. The total number of all items accepted on the terminal;

3. For bills accepted, the number of bills for each bill denomination; and

4. For all other notes accepted, the number of notes accepted by note amount.

K. Meters can be on the server instead of the terminal.

11VAC10-47-110. Historical horse race specifications and selection requirements.

A. The outcome of any historical horse race wager shall be derived from the result of one or more historical horse races.

B. All historical horse races must be chosen at random from a database of actual historical horse races. All races in the database shall have a valid historical horse race result with details recorded at the same level as other races in the database, and shall include:

1. Horse names;

2. Race location;

3. Race date; and

4. Jockey name.

C. In the case where a random number generator is used to select the historical horse races for a wager, all possible races in the database shall be available for selection.

11VAC10-47-120. Wagering terminal historical race display.

A. All wagering terminals shall have video displays that clearly identify the entertaining game theme, if any, being used to offer pari-mutuel wagering on historical horse racing. The video display shall make available the rules of the historical horse racing wager and the award that will be paid to the patron when the patron obtains a specific win.

B. All payable information, rules of play, and help screen information shall be available to a patron prior to placing a wager.

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C. All wagering terminals shall have video displays that make available to the patron the rules of any features or interactive functions that may occur on the patron interface as part of the entertaining display of the wager and its outcome.

D. The video display shall clearly indicate whether awards are designated in credits or currency.

E. All wagering terminals shall display the following information to the patron at all times the wagering terminal is available for patron wager input:

1. The patron's current credit balance in currency or credits;
2. The current bet amount;
3. The amount won for the last completed game until the next game starts or betting options are modified;
4. The patron options selected for the last completed game until the next game starts or a new selection is made; and
5. A disclaimer stating "Malfunction Voids All Pays" or some equivalent wording approved by the commission. This may be presented as a permanent sign on the terminal.

F. The default game display upon terminal reset shall not be a false winning outcome.

G. Entertaining game features that simulate bonus or free games shall meet the following requirements:

1. The initiation of a bonus or free game shall only be based on the result of the wager placed by the patron on the result of the historical horse race selected for the wager;
2. The bonus or free game shall not require additional money to be wagered by the patron;
3. The entertaining display shall make it clear to the patron that the patron is in bonus mode to avoid the possibility of the patron unknowingly leaving the wagering terminal while in a bonus mode; and
4. If the bonus or free game requires an input from the patron, the terminal shall provide a means to complete the bonus or free game from a touch screen or hard button.

H. Electronic metering displays shall:

1. At all times include all credits or cash available for the patron to wager or cash out unless the terminal is in an error or malfunction state. This information is not required when the patron is viewing a menu or help screen item;
2. Reflect the value of every prize at the end of a wager and add it to the patron's credit meter, except for handpays; and
3. Show the cash value collected by the patron upon a cashout unless the terminal is in an error or malfunction state.

I. A wager is complete when the final transfer to the patron's credit meter takes place or when all credits wagered are lost.

11VAC10-47-130. Required reports for wagering on historical horse races; audit and inspection by the commission.

A. All systems used for pari-mutuel wagering on historical horse races shall provide financial reports for individual approved wager model configurations and total pool amounts for each pool. Reports shall be available at the end of the wagering day or upon request by the commission with information current since the end of the last wagering day. The reports shall include:

1. Current values of each pari-mutuel wagering pool;
2. Total amounts wagered for all pools;
3. Total amounts won by patrons for all pools;
4. Total commission withheld for all pools;
5. Total breakage for all pools, where applicable;
6. Total amount wagered at each terminal;
7. Total amount won by patrons at a terminal;
8. The amount wagered on each mathematical model configuration and the amount won from each mathematical model configuration offered at a terminal;
9. Total amount of each type of financial instrument inserted into a terminal;
10. Total amount cashed out in voucher or handpays at a terminal; and
11. Taxable win events including:
 - a. Time and date of win;
 - b. Wagering terminal identification number;
 - c. Amount wagered resulting in taxable win;
 - d. Taxable amount won; and
 - e. Withholding amount.

B. As provided in subdivision 2 of § 59.1-369 of the Code of Virginia, the commission or its authorized representatives may, at any time, conduct an audit or inspection of the financial reports, software, terminals, or other equipment used by a licensee in conducting operations under this chapter.

11VAC10-47-140. Permits required.

All racing officials employed in a satellite facility or at a significant infrastructure facility that offers pari-mutuel wagering on historical horse racing shall apply for permits under the provisions of 11VAC10-50. All participants employed in such facilities shall apply for permits under the provisions of 11VAC10-60.

11VAC10-47-150. Filing of application; fee.

An applicant for a license to offer pari-mutuel wagering on historical horse racing shall apply for a license to conduct the same with the commission at its offices, with the application tendered by hand delivery, certified mail, or recognized overnight courier service with delivery confirmation to the attention of the executive secretary of the commission. An application fee of \$1,000 shall be paid for each location where the applicant seeks to offer pari-mutuel wagering on historical horse racing.

11VAC10-47-160. Required information.

An application for a license to conduct pari-mutuel wagering on historical horse racing shall contain the materials and information specified in 11VAC10-40-130 through 11VAC10-40-280. The applicant may reference its materials provided for a satellite facility license or significant infrastructure limited license as part of its application for a license to offer pari-mutuel wagering on historical horse racing. The application shall also contain detailed information on the games to be offered by the applicant, including information demonstrating compliance with the requirements of this chapter. After review of the application, the executive secretary may request the applicant provide additional information, which the applicant shall promptly tender to the commission. Failure to provide information contained in this chapter, or as requested by the commission, shall be grounds for the commission to deny the request for a license to conduct pari-mutuel wagering on historical horse racing.

11VAC10-47-170. Duration of license; transfer.

A license for conducting pari-mutuel wagering on historical horse racing shall be effective for one calendar year or so long as the licensee shall hold a significant infrastructure limited license or satellite facility license for the particular location, whichever is shorter. A licensee may not transfer its license, or assign responsibility for compliance with the conditions of its license, to any party, including, without limitation, a transfer of effective control of the licensee, without commission approval.

11VAC10-47-180. Simulcast operations.

For any satellite facility that offers pari-mutuel wagering on historical horse racing, the following conditions shall apply:

1. A licensee may not reduce, limit, or otherwise alter the nature or extent of its simulcast operations if it offers pari-mutuel wagering on historical horse racing without commission approval.
2. Any licensee must provide the following minimum simulcast offerings:
 - a. An average daily simulcast schedule of not less than 14 racetracks, unless otherwise approved by the commission for a specific facility;

b. At least two tellers dedicated to simulcast wagering, or one teller for every 200 historical horse racing terminals at the satellite facility, whichever number is greater; and

c. At least 20 self-service tote machines dedicated to simulcast wagering at each satellite facility, unless otherwise approved by the commission for a specific facility.

3. The licensee must promote simulcast wagering inside its satellite facility and make available televisions broadcasting simulcast signal, tote machines, and tellers in a prominent location for use by patrons.

4. The commission may authorize a licensee to provide historical racing terminals at a satellite facility located in a jurisdiction with valid and unexpired referenda on pari-mutuel wagering in accordance with the following limits on the total number of historical racing terminals located in such jurisdiction:

a. Up to 700 terminals in a jurisdiction with a population of 120,000 or greater;

b. Up to 300 terminals in a jurisdiction with a population between 60,000 and 120,000; and

c. Up to 150 terminals in a jurisdiction with a population of 60,000 or less.

The population of a jurisdiction shall be determined based upon the most recent University of Virginia Weldon Cooper Center population estimates.

5. Any such satellite facility must receive all appropriate local government authorizations.

6. In no circumstance shall the total number of historical racing terminals located in a jurisdiction set forth in subdivision 4 of this section exceed 25% of the total limit for such jurisdiction absent formal approval by the relevant city or town council or county board of supervisors of the jurisdiction.

7. In no circumstance shall the combined statewide total number of historical racing terminals located at satellite facilities and significant infrastructure facilities exceed 3,000.

[8. The commission shall authorize an additional 600 historical racing terminals each time a local referendum required by § 58.1-4123 of the Code of Virginia is approved, provided that the total number of additional machines authorized pursuant to this section shall not exceed 2,000 statewide.

a. This increase in historical racing terminals shall not apply with respect to any city where a significant infrastructure limited licensee, as defined in § 59.1-365 of the Code of Virginia, or the affiliate of such licensee, is awarded a casino operator's license.

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b. Notwithstanding the other provisions of this section and subject to the local referendum requirements of § 59.1-391 of the Code of Virginia, for the terminals specifically authorized in this section, the commission shall authorize up to 1,650 terminals in a satellite facility in a metropolitan area with a population in excess of 2.5 million located in a jurisdiction that has passed a referendum pursuant to the requirements of § 59.1-391 of the Code of Virginia prior to January 1, 2020, and 500 terminals in a metropolitan area with a population in excess of 300,000, provided that no additional terminals authorized pursuant to this subsection shall be located within 35 miles of an eligible host city as described in § 58.1-4107 of the Code of Virginia.

(1) No satellite facility shall be authorized in any locality that is included in the Regional Improvement Commission established in the fifth enactment clause of Chapter 1197 of the 2020 Acts of Assembly.

(2) Population determinations for purposes of this subsection shall be based on the 2018 population estimates from the Weldon Cooper Center for Public Service of the University of Virginia.

9. The tax rate for any terminal added pursuant to subdivision 8 of this section shall be calculated so that the licensee shall retain 1.6% of such pool to be distributed as follows:

a. 0.96% to the Commonwealth as a license tax; and

b. If generated (i) at a racetrack, 0.64% to the locality in which the racetrack is located or (ii) at a satellite facility, 0.32% to the locality in which the satellite facility is located and 0.32% to the Virginia locality in which the racetrack is located.

10. For any local referendum passed pursuant to § 59.1-391 after July 1, 2020, the commission shall not authorize any additional satellite facilities as defined in § 59.1-365 of the Code of Virginia, or additional simulcast wagering terminals pursuant to this section, during a period of two years after July 1, 2020.]

11VAC10-47-190. Significant infrastructure limited licensee operations.

For any significant infrastructure limited licensee that offers pari-mutuel wagering on historical horse racing, the following conditions shall apply:

1. For each calendar year, a licensee in accordance with 11VAC10-20-200 shall submit to the commission a request for live racing days at its significant infrastructure facility that includes at least:

a. Fifteen days of live racing, consisting of not less than six races per day; or

b. One day of live racing, consisting of not less than six races per day, for every 100 historical racing terminals installed at such facility together with any satellite facility owned, operated, controlled, managed, or otherwise affiliated directly or indirectly with such licensee, whichever number shall be greater.

2. In no circumstance shall the total number of historical racing terminals at any significant infrastructure facility exceed 700 terminals.

3. Live racing dates shall be assigned by the commission and conducted in accordance with the procedure in 11VAC10-20-220.

[4. For every 100 additional terminals authorized pursuant to subdivision 8 of 11VAC10-47-180, the total number of live horse racing days held shall be increased by one day.]

11VAC10-47-200. Responsible gaming.

A. A licensee shall implement a program to promote responsible gaming by its patrons and provide details of the same to the commission. At a minimum, such program shall require:

1. Posting in a conspicuous place in every place where pari-mutuel wagering on historical horse racing is conducted a sign that bears a toll-free number approved by the Virginia Council on Problem Gambling or other organizations that provide assistance to problem gamblers;

2. Providing informational leaflets or other similar materials at the licensee's facilities on the dangers associated with problem gambling;

3. Including in the licensee's promotional and marketing materials information on problem gambling and organizations that provide assistance to problem gamblers;

4. Routine auditing of patron activity to identify patrons who have suffered significant financial losses in repeated visits to the licensee's facilities and providing such patrons with information on organizations that provide assistance to problem gamblers;

5. If the licensee holds a license from the Virginia Alcohol Beverage Control Authority to serve alcoholic beverages, training for employees to identify patrons who have consumed excessive amounts of alcohol to prevent such patrons from continuing to engage in wagering activity while impaired;

6. Partnership with the Virginia Council on Problem Gambling, the National Council on Problem Gambling, or other similar organization to identify and promote best practices for preventing problem gambling;

7. Training for all employees who have contact with patrons as well as administrative and corporate staff members that shall include skills and procedures to

respond to situations where a patron exhibits warning signs of a gambling problem or where a patron discloses they may have a gambling problem. Such employees and staff should be trained immediately upon their hiring and retrained and tested regularly; and

8. Ensuring that any request by a patron who wishes to self-exclude from the licensee's facilities is honored by the licensee.

B. A licensee shall report annually to the commission and make a copy available to the public on its efforts to meet subsection A of this section, its efforts to identify problem gamblers, and steps taken to:

1. Prevent such individuals from continuing to engage in pari-mutuel wagering on historical horse racing; and
2. Provide assistance to these individuals to address problem gambling activity.

V.A.R. Doc. No. R19-5684; Filed August 25, 2020, 1:59 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-100, 12VAC30-50-105, 12VAC30-50-140).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-20).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 15, 2020.

Effective Date: October 30, 2020.

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 authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. 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

State Plan for Medical Assistance and to promulgate regulations according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: This purpose of this action is to comply with the Centers for Medicare and Medicaid Services (CMS) Medicaid Mental Health Parity Rule issued on March 30, 2016. Removing the limits on inpatient psychiatric hospitalization helps protect the health, safety, and welfare of citizens by allowing inpatient psychiatric hospitalizations to be service authorized based on medical necessity and not limited to 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. Managed care organizations have not been applying such limitations and have appropriately permitted hospitalizations based on medical necessity.

Rationale for Using Fast-Track Rulemaking Process: The amendments are mandated by the Director of DMAS, who is authorized to promulgate regulations in accordance with the requirements of the Board of Medical Assistance. This regulatory action is being promulgated as a fast-track rulemaking action because it is expected to be noncontroversial.

Substance: The amendments strike the limit of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan and update practitioner terminology as it relates to working titles, clarify acute care hospital weekend and holiday admissions, and update the reconsideration process.

Issues: The primary advantage of this action to both the public and the agency is the removal of outdated, non-CMS-compliant regulations from the Virginia Administrative Code and improved access to care for qualified Medicaid members. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Medical Assistance Services (DMAS) proposes 1) to update this regulation to reflect the removal of the 21-day- per-admission limit in a 60-day period for the same or similar diagnosis or treatment plan for psychiatric inpatient hospitalization, and 2) update terminology and clarify language as well as procedures.

Background. On March 30, 2016, the Centers for Medicare and Medicaid issued the Mental Health Parity Rule¹ which removed the limit of 21-day-per-admission in a 60-day period for the same or similar diagnosis or treatment plan for psychiatric inpatient hospitalizations. The parity rule was designed to ensure that accessing mental health and substance use disorder services is no more difficult than accessing medical and surgical services. The proposed changes are

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intended to allow inpatient psychiatric hospitalizations to be service authorized based on medical necessity and not limited to 21 days per admission in a 60-day period. Since 2016, DMAS has not been applying the 21-day limit in delivery of psychiatric inpatient hospitalizations. This action updates the regulation to reflect the practice, terminology, and procedure that have been followed since 2016.

Estimated Benefits and Costs. The removal of the 21-day limit applies to both managed care and fee-for-service delivery models. However, according to DMAS, this limit has never been implemented under the managed care delivery system even before 2016. Thus, the effects of this action are practically limited only to psychiatric inpatient hospitalizations accessed through the fee-for-service delivery system. The removal of the 21-day limit in 2016 has allowed providers to provide and recipients to receive longer hospitalizations. DMAS estimates that there were approximately 200 members who received psychiatric inpatient hospitalizations beyond the 21-day limit at a cost of \$76,922 in total funds or \$38,461 in state funds in a given year. Thus, the main impact of this change is provision of longer psychiatric inpatient hospitalizations since 2016 at an added cost of \$38,461 to the Commonwealth annually.

The remaining changes are not expected to create any significant impact other than improving the readability and clarity of the existing rules and procedures.

Businesses and Other Entities Affected. There are 12 freestanding psychiatric hospitals and 71 general hospitals with psychiatric units and approximately 200 Medicaid members estimated to be affected on an annual basis. The proposed amendments do not appear to impose costs.

Localities² Affected.³ The proposed amendments should not affect any locality more than others. The proposed amendments do not appear to introduce costs for local governments.

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

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

Adverse Effect on Small Businesses.⁴ The proposed amendments do not adversely affect small businesses.

¹<https://www.govinfo.gov/content/pkg/FR-2016-03-30/pdf/2016-06876.pdf>

²"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

³§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁴Pursuant 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."

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) remove the 21-day-per-admission limit in a 60-day period for the same or similar diagnosis or treatment plan for psychiatric inpatient hospitalization and (ii) update terminology and clarify language and procedures.

Part III

Amount, Duration, and Scope of Services

12VAC30-50-100. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; enrolled providers.

A. ~~Preauthorization~~ Service authorization of all inpatient hospital services will be performed. This applies to both general acute care hospitals and freestanding psychiatric hospitals. Nonauthorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS) or its contractor. ~~Preauthorization~~ Service authorization shall be based on criteria specified by DMAS. ~~In conjunction with preauthorization, an appropriate length of stay will be assigned using the HCIA, Inc., Length of Stay by Diagnosis and Operation, Southern Region, 1996, as guidelines.~~

1. Admission review.

a. Planned/scheduled admissions. Review shall be done prior to admission to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned at the time of this review. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

b. Unplanned/urgent or emergency admissions. These admissions will be permitted before any ~~prior~~ service authorization procedures. Review shall be performed within one working day to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned for those admissions which have been determined to be appropriate. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

2. Concurrent review shall end for nonpsychiatric claims with dates of admission and services on or after July 1, 1998, with the full implementation of the DRG reimbursement methodology. Concurrent review shall be done to determine that inpatient hospitalization continues to be medically necessary. Prior to the expiration of the

previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

3. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services. Adverse authorization decisions shall have available a reconsideration process as set out in subdivision 4 of this subsection.

4. Reconsideration process. Providers shall be given the opportunity to request a reconsideration of any adverse service authorization decision. Reconsideration requests shall be reviewed by a physician. Should the case be denied, the member or provider may request an appeal by following the procedures described in the denial letter.

a. ~~Providers requesting reconsideration must do so upon verbal notification of denial.~~

b. ~~This process is available to providers when the nurse reviewers advise the providers by telephone that the medical information provided does not meet DMAS specified criteria. At this point, the provider must request by telephone a higher level of review if he disagrees with the nurse reviewer's findings. If higher level review is not requested, the case will be denied and a denial letter generated to both the provider and recipient identifying appeal rights.~~

e. ~~If higher level review is requested, the authorization request will be held in suspense and referred to the Utilization Management Supervisor (UMS). The UMS shall have one working day to render a decision. If the UMS upholds the adverse decision, the provider may accept that decision and the case will be denied and a denial letter identifying appeal rights will be generated to both the provider and the recipient. If the provider continues to disagree with the UMS' adverse decision, he must request physician review by DMAS medical support. If higher level review is requested, the authorization request will be held in suspense and referred to DMAS medical support for the last step of reconsideration.~~

d. ~~DMAS medical support will review all case specific medical information. Medical support shall have two working days to render a decision. If medical support upholds the adverse decision, the request for~~

~~authorization will then be denied and a letter identifying appeal rights will be generated to both the provider and the recipient. The entire reconsideration process must be completed within three working days.~~

5. Appeals process.

a. Recipient appeals. Upon receipt of a denial letter, the recipient shall have the right to appeal the adverse decision. Under the Client Appeals regulations, Part I (12VAC30-110-10 et seq.) of 12VAC30-110, the recipient shall have 30 days from the date of the denial letter to file an appeal.

b. Provider appeals. If the reconsideration steps are exhausted and the provider continues to disagree, upon receipt of the denial letter, the provider shall have 30 days from the date of the denial letter to file an appeal if the issue is whether DMAS will reimburse the provider for services already rendered. The appeal shall be held in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. Out-of-state inpatient general acute care hospitals and freestanding psychiatric hospitals, enrolled providers. In addition to meeting all of the ~~preauthorization~~ service authorization requirements specified in subsection A of this section, out-of-state hospitals must further demonstrate that the requested admission meets at least one of the following additional standards. 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; or
4. It is the general practice for recipients in a particular locality to use medical resources in another state.

C. Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

D. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to life of the mother if the fetus were carried to term.

E. ~~Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60 day period for the same or similar diagnosis or treatment plan. The 60 day period would begin on the first hospitalization (if there are multiple~~

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~~admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically indicated. Except as previously noted, regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60-day period. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days for nonpsychiatric admissions shall cease with dates of service on or after July 1, 1998.~~

~~EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, 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 general hospitals and freestanding psychiatric hospitals 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 or psychological, as appropriate, examination. The admission and length of stay must be medically justified and preauthorized via the admission and concurrent or retrospective review processes described in subsection A of this section. Medically unjustified days in such hospitalizations shall not be authorized for payment.~~

~~F. E.~~ Mandatory lengths of stay.

1. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically justified.

2. Coverage for a radical or modified radical mastectomy for treatment of disease or trauma of the breast shall be provided for a minimum of 48 hours. Coverage for a total or partial mastectomy with lymph node dissection for treatment of disease or trauma of the breast shall be provided for a minimum of 24 hours. Additional days beyond the specified minimums for either radical, modified, total, or partial mastectomies may be covered if medically justified and prior authorized until the diagnosis related grouping methodology is fully implemented. Nothing in this chapter shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

~~G. F.~~ Coverage in freestanding psychiatric hospitals shall not be available for individuals aged 21 through 64.

Medically necessary inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the limits of coverage prescribed in this section and 12VAC30-50-105.

~~H. G.~~ For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization service authorization by DMAS medical support. Inpatient hospitalization related to kidney transplantation will require preauthorization service authorization at the time of admission and, concurrently, for length of stay. Cornea transplants do not require preauthorization service authorization of the procedure, but inpatient hospitalization related to such transplants will require preauthorization service authorization for admission and, concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

~~I. H.~~ In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy, or abortion procedures were performed shall be subject to review. Hospitals must submit the required DMAS forms corresponding to the procedures. Regardless of authorization for the hospitalization during which these procedures were performed, the claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

~~J. I.~~ Addiction and recovery treatment services shall be covered in inpatient facilities consistent with 12VAC30-130-5000 et seq.

12VAC30-50-105. Inpatient hospital services provided at general acute care hospitals and freestanding psychiatric hospitals; nonenrolled providers (nonparticipating/out of state).

A. The full DRG inpatient reimbursement methodology shall become effective July 1, 1998, for general acute care hospitals and freestanding psychiatric hospitals which are

nonenrolled providers (nonparticipating/out of state) and the same reviews, criteria, and requirements shall apply as are applied to enrolled, in-state, participating hospitals in 12VAC30-50-100.

B. Inpatient hospital services rendered by nonenrolled providers shall not require ~~prior service~~ authorization with the exception of transplants as described in subsection ~~K I~~ of this section and this subsection. However, these inpatient hospital services claims will be suspended from automated computer payment and will be manually reviewed for medical necessity as described in subsections B through ~~K I~~ of this section using criteria specified by DMAS. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one of the following conditions. It shall be the responsibility of the hospital, when requesting ~~prior service~~ authorization for the admission, to demonstrate that one of the following conditions exists in order to obtain authorization.

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 the general practice for recipients in a particular locality to use medical resources in another state.

~~C. Medicaid inpatient hospital admissions (lengths of stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under four days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed three days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection H of this section.)~~

~~D. C.~~ Cosmetic surgical procedures shall not be covered unless performed for physiological reasons and require DMAS prior approval.

~~E. D.~~ Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to life of the mother if the fetus was carried to term.

~~F. E.~~ Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all pre-operative days.

Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

~~G. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.~~

~~H. Coverage of inpatient hospitalization shall be limited to a total of 21 days per admission in a 60-day period for the same or similar diagnosis or treatment plan. The 60-day period would begin on the first hospitalization (if there are multiple admissions) admission date. There may be multiple admissions during this 60-day period. Claims which exceed 21 days per admission within 60 days for the same or similar diagnosis or treatment plan will not be reimbursed. Claims which exceed 21 days per admission within 60 days with a different diagnosis or treatment plan will be considered for reimbursement if medically justified. E. The admission and length of stay must be medically justified and ~~preauthorized service authorized~~ via the admission and concurrent review processes described in subsection A of 12VAC30-50-100. Claims for stays exceeding 21 days in a 60-day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998. Medically unjustified days in such hospitalizations shall not be reimbursed by DMAS.~~

~~EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, 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 general hospitals and freestanding psychiatric facilities 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 or psychological, as appropriate, examination.~~

~~F. G.~~ Mandatory lengths of stay.

1. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically necessary.

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2. Coverage for a radical or modified radical mastectomy for treatment of disease or trauma of the breast shall be provided for a minimum of 48 hours. Coverage for a total or partial mastectomy with lymph node dissection for treatment of disease or trauma of the breast shall be provided for a minimum of 24 hours. Additional days beyond the specified minimums for either radical, modified, total, or partial mastectomies may be covered if medically justified and prior authorized until the diagnosis related grouping methodology is fully implemented. Nothing in this chapter shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

~~J.~~ H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the DMAS outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions.

~~K.~~ I. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require ~~preauthorization~~ service authorization by DMAS. Cornea transplants do not require ~~preauthorization~~ service authorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

~~L.~~ J. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy, or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

12VAC30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: ~~(i) a licensed clinical psychologist; (ii) a LMHP-RP, as defined in 12VAC30-50-130; (iii) a licensed clinical social worker; (iv) a LMHP-S, as defined in 12VAC30-50-130; (v) a licensed professional counselor; (vi) a LMHP-R, as defined in 12VAC30-50-130; (vii) a licensed clinical nurse specialist psychiatric; (viii) a licensed marriage and family therapist; or (ix) a licensed substance abuse professional~~ an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130. Medically necessary psychiatric services shall be covered by ~~DMAS~~ the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

2. Psychiatric services shall be considered appropriate when an individual meets the following criteria:

- a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels that have been impaired;
- b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;
- c. Is at risk for developing or requires treatment for maladaptive coping strategies; and
- d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial

endangerment of life to the mother if the fetus was carried to term.

G. Physician visits to inpatient psychiatric hospital patients ~~over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further~~ are restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient psychiatric hospital days as determined by ~~the Program~~ DMAS or its contractor.

~~EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, 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 freestanding psychiatric facilities 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 psychiatric assessment. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.~~

H. (Reserved.)

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require ~~preauthorization~~ service authorization by DMAS. Cornea transplants do not require ~~preauthorization~~ service authorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

L. Breast reconstruction/prostheses following mastectomy and breast reduction.

1. If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any

medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.

2. Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.

M. Admitting physicians shall comply with the requirements for coverage of out-of-state inpatient hospital services. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one the following conditions. It shall be the responsibility of the hospital, when requesting prior service authorization for the admission, 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; or
4. It is general practice for recipients in a particular locality to use medical resources in another state.

N. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

O. Prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. The referring physician ordering nonemergency outpatient Magnetic Resonance Imaging (MRI), Computerized Axial Tomography (CAT) scans, or Positron Emission Tomography (PET) scans must obtain prior authorization from ~~the Department of Medical Assistance Services (DMAS)~~ DMAS for those scans. The servicing

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provider will not be reimbursed for the scan unless proper prior authorization is obtained from DMAS by the referring physician.

P. Addiction and recovery treatment services shall be covered in physician services consistent with 12VAC30-130-5000 et seq.

12VAC30-60-20. Utilization control: general acute care hospitals; enrolled providers.

A. The Department of Medical Assistance Services (DMAS) shall not reimburse for services which are not authorized as follows:

1. DMAS shall monitor, consistent with state law, the utilization of all inpatient hospital services. All inpatient hospital stays shall be ~~preauthorized~~ service authorized prior to admission. Services rendered without such ~~prior~~ service authorization shall not be covered, except as stated in ~~subdivisions~~ subdivision 2 and 3 of this subsection.

2. If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, the provider shall be responsible for obtaining the required authorization prior to billing DMAS for these services.

~~3. If a Medicaid eligible individual is admitted to inpatient hospital care on a Saturday, Sunday, holiday, or after normal working hours, the provider shall be responsible for obtaining the required authorization on the next work day following such admission.~~

~~4. 3. Regardless of preauthorization service authorization, in the following cases hospital inpatient claims shall continue to be suspended for DMAS review before reimbursement is approved. DMAS shall review all claims for individuals over the age of 21 which are suspended for exceeding the 21-day limit per admission in a 60-day period for the same or similar diagnoses prior to reimbursement for the stay. This suspension shall cease for nonpsychiatric hospitalizations with dates of service on or after July 1, 1998. DMAS shall review all claims which are suspended for sterilization, hysterectomy, or abortion procedures for the presence of the required federal and state forms prior to reimbursement. If the forms are not attached to the bill and not properly completed, reimbursement for the services rendered will be denied or reduced according to DMAS policy.~~

B. To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in 42 CFR 456.50 through 456.145, an annual audit will be conducted of each enrolled hospital. This audit can be performed either on site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the auditors to conduct such review if done on site. The audits shall consist of review of the following:

1. Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in 42 CFR 456.100 through 456.145.

2. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR 456.105 through 456.106.

3. Verification of Utilization Management Committee meetings since the last annual audit, including dates and lists of attendees to determine that the committee is meeting according to their utilization management meeting requirements.

4. One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with the 42 CFR 456.141 through 456.145.

5. Topic of one ongoing Medical Care Evaluation Study to determine the hospital is in compliance with the 42 CFR 456.145.

6. From a list of randomly selected paid claims, the hospital must provide a copy of the physician admission certification and written plan of care for each selected stay to determine the hospital's compliance with the 42 CFR 456.60 and 456.80. If any of the required documentation does not meet the requirements found in the 42 CFR 456.60 through 456.80, reimbursement may be retracted.

7. The hospitals may appeal in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) any adverse decision resulting from such audits which results in retraction of payment. The appeal must be requested within 30 days of the date of the letter notifying the hospital of the retraction.

VA.R. Doc. No. R21-6072; Filed August 17, 2020, 8:06 a.m.

BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (adding 12VAC35-105-435).

Statutory Authority: §§ 37.2-100 and 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 14, 2020.

Effective Date: October 30, 2020.

Agency Contact: John Cimino, Licensing Legal and Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 298-3279, FAX (804) 692-0066, TTY (804) 371-8977, or email john.cimino@dbhds.virginia.gov.

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

Purpose: The intent of the legislative mandate is to protect the safety of individuals receiving services from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is necessary to comply with Chapter 776 of the 2019 Acts of Assembly and therefore is noncontroversial.

Substance: This action is a mandate from the General Assembly, with specific language. The new section text closely tracks the language of the bill, except that it would require the statement to be "in writing," which is an act of discretion by the department. The new language is in its own new section, 12VAC35-105-435, which follows immediately after 12VAC35-105-430, a section regarding employee or contractor personnel records.

Issues: The primary advantage to the public, specifically individuals receiving services, is better protection of those individuals from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults.

This regulatory requirement creates an opportunity for providers to learn of employee work history, which may include founded cases of abuse or neglect, that may render a prospective employee unfit for employment and thereby reduce risk to individuals receiving services.

There are no disadvantages to the public. This language could potentially increase service quality based on the fact that providers are receiving references related to character, ability, and fitness of potential employees providing direct care services.

There is no specific advantage or disadvantage to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) seeks to add a new section to the regulation (12VAC35-105-435) titled Provision of provider statement to any other provider. This section, as proposed, seeks to protect

adult individuals receiving developmental services from caregiver abuse, in the absence of a registry for adult abuse in the context of personal care services. The proposed change would require employers of caregivers to provide a written statement addressing the "character, ability, and fitness for employment" of their current or former employees at the request of such information from another organization/provider seeking to employ that caregiver, provided the caregiver in question consents to the disclosure of this information in writing.

Background. The 2019 Acts of Assembly (Chapter 776) directs the Board to amend the regulations governing licensed providers to include a requirement that licensed providers (could be an individual or organization) are to provide a character reference for a current or former employee to another licensed provider who may be considering hiring that caregiver. Specifically, this requirement would apply when all of the following conditions are met.

- i. The person in question, who would be the subject of this statement, is a current or former employee or other individual currently or previously associated with the provider in a capacity that requires a criminal background check pursuant to § 37.2-416 or § 37.2-506 of the Code of Virginia.
- ii. The person in question has applied for employment or to fill a role that requires a criminal background check with a licensed provider.
- iii. The provider writing the statement receives a request for the statement from the other licensed provider.
- iv. The provider writing the statement receives written consent for the disclosure of such information, executed by the person who would be the subject of the statement.

The proposed new section of the regulation matches the language of the statute mandating it, almost verbatim. The only difference is that the proposed addition specifies that the statement be written.

Estimated Benefits and Costs. In the absence of a registry for workers who have been convicted of abuse or neglect toward adults in their care, any measure that provides greater information about a potential employee's propensity to engage in abuse or neglect would certainly benefit prospective employers as well as the adults under their care. Although the proposed addition does not require prospective employers to request a letter, they may feel encouraged to do so knowing that licensed providers would be required to provide a statement, if asked, provided the employee consents. To the extent that providers may have been reluctant to ask for a reference previously and are now more likely to request a statement, they and the people they serve may be benefited by this new requirement.¹

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Requiring a statement is a useful addition to the extent that it can provide information that would not already be available to the prospective employer. The first two conditions imply that the employee has to be moving from a role that required a background check to another role that requires a background check, so the provider statement would only be adding information to the extent that it could provide more information than the background check. According to the Department of Behavioral Health and Developmental Services (DBHDS), a background check would only reveal a history of abuse if charges had been filed against the individual and would not reveal the results of any internal investigations that did not involve law enforcement. Hence, the statements are intended to capture information that is likely to be sensitive in nature.

However, requiring that they be written may impose certain indirect costs that could reduce their effectiveness in this regard. In particular, the terms "character, ability, and fitness" are not defined in the regulation and are thus open to the provider's interpretation. DBHDS staff clarified that the statement is intended to include the details and outcomes of any internal investigation into reported abuse involving the employee that had been conducted by the former employer. The third and fourth conditions would protect employers by requiring that statements only be provided in response to a request initiated by the prospective employer with the documented consent of the former employee. To the extent that applicants rejected from jobs may respond by requesting a copy of the statement, requiring a written statement exposes the writer to some risk of legal action, even if it is by a very small degree. This may be more likely to occur if the one or more of the parties involved is a state or local agency, to which the employee could submit a Freedom of Information Act request to obtain their statement. Further, providers may bear some potential risk to their licensure status, or reputation, if the statement's contents were disclosed following a request and details of internal investigations or other information about any abuse that occurred were more broadly known as a result.

Businesses and Other Entities Affected. The proposed amendment affects licensed providers of behavioral health and developmental services to adults, and their current, former, or prospective employees or associates, in positions that require criminal history background checks. DBHDS licenses approximately 1,100 providers in Virginia, and they estimate that more than 100,000 people are served by the providers.² Many of these providers are likely to be small businesses, but the exact number is unknown.

Localities³ Affected.⁴ The proposed requirements do not appear to affect particular localities disproportionately or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment; any increase in

caregivers' unemployment due to negative provider statements is likely to be marginal, in part because of the shortage of caregivers.

Effects on the Use and Value of Private Property. The proposed amendment has no effect on the use and value of private property, nor does it affect real estate development costs.

Adverse Effect on Small Businesses.⁵

Types and Estimated Number of Small Businesses Affected: DBHDS licenses approximately 1,100 providers in Virginia, many of whom are likely to be small businesses, although the exact number is unknown.

Costs and Other Effects: As discussed, the proposal does not impose any direct costs, over and above the marginal time cost of preparing a statement. To the extent that some providers may have concerns about sharing the details of internal investigations, they may not provide substantive information in their written statements.

Alternative Method that Minimizes Adverse Impact: In keeping with the language of the legislative mandate, the Board could remove the requirement that the statement be provided in writing. The requesting licensed provider could confirm to DBHDS that the character reference has been provided, even if it is verbal, so that the state agency would know that the proposed requirement has been met.

¹Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

²If the prospective employer requests a statement and the applicant does not consent, that too could be informative.

³See Table 2 in <https://rga.lis.virginia.gov/Published/2017/RD552/PDF> for details on individuals served by Community Service Boards or State Facilities.

⁴"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁵§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁶Pursuant 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."

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

Summary:

Pursuant to Chapter 776 of the 2019 Acts of Assembly, the action establishes a requirement that employers of caregivers provide a written statement addressing the "character, ability, and fitness for employment" of current

or former employees at the request of such information from another organization or provider seeking to employ that caregiver, provided the caregiver in question consents to the disclosure of this information in writing.

12VAC35-105-435. Provision of provider statement to any other provider.

Providers shall give a statement in writing regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon:

1. Receipt of a request for such information from the other licensed provider; and
2. Written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia.

Nothing in this provision shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

VA.R. Doc. No. R21-5979; Filed August 12, 2020, 4:31 p.m.



TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Proposed Regulation

Title of Regulation: 13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-41, 13VAC5-21-45).

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Information:

September 28, 2020 - 10 a.m. - Google Meet Meeting - The link to access the electronic meeting is meet.google.com/rqj-cmsq-rft, or copy and paste the link into a browser. Additional details and information are available on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Basis: The statutory authority to update the regulation is contained in § 36-137 of the Code of Virginia.

Purpose: As recognized in § 36-99 of the Code of Virginia, the purpose of the Uniform Statewide Building Code is to protect the health, safety, and welfare of the citizens of the Commonwealth, while permitting buildings to be constructed in the most economical manner consistent with such pertinent recognized standards relative to construction, health, and safety. Therefore, the certification and associated training and education of the local and nongovernment code enforcement personnel is inherent in and critical to the achievement of this purpose and ensures the technical and professional level of those personnel, including the knowledge and skill gained resultant from the initial training, mandated periodic training, continuing education, and familiarity with and understanding of recent developments within the building codes and construction industry.

Substance: The proposed amendment changes the sentence structure of certification categories and training requirements. The change is editorial and alters the "list of certificates offered and sets out the required training necessary to attend and complete..." to "the list of certificates offered and sets out the training required to be completed to obtain each certificate..." There is an additional editorial change deleting an unnecessary word.

Issues: This regulatory action poses no foreseen disadvantages to the public or the Commonwealth. The amendments provide additional clarity for regulants and the department regarding requirements for training to obtain certifications.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend 13VAC5-21 Virginia Certification Standards to make grammatical changes to improve clarity.

Background. In March 2019, the Board updated 13VAC5-51 Virginia Statewide Fire Prevention Code (fire code) to reference the latest nationally recognized codes and standards.¹ These updates included changes to the certifications required for fire officials. Hence, the Board also reviewed the regulation on certification standards to ensure it remained consistent with the fire code requirements. The Board proposes to replace "the required training necessary to

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attend and complete to obtain a certificate" with "the training required to be completed to obtain each certificate," which simplifies the clause and reiterates that multiple certifications exist with unique requirements.

Estimated Benefits and Costs. The proposed amendment benefits readers of the regulation, especially those interested in obtaining a certification, by improving the clarity of the language. It does not introduce any additional costs.

Businesses and Other Entities Affected. Potential applicants for any certification from the Department of Housing and Community Development stand to benefit from having additional clarity. The proposed amendment does not introduce any new costs for businesses or other entities.

Small Businesses² Affected. The proposed amendment does not directly affect any small businesses. Individuals seeking certification may be self-employed or employed by a small business, but the number of such individuals is unknown and they would not face any new costs as a result of the proposed amendments.

Localities³ Affected.⁴ The proposed amendment potentially affects individuals seeking certification in all localities. The proposed amendments are unlikely to introduce new costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to cause any changes to total employment.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹There is no associated regulatory action because the fire code regulation is exempt from the Administrative Process Act, as established via email correspondence at the NOIRA stage of this action.

²Pursuant 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."

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis (EIA) prepared by the Department of Planning and Budget for this proposed regulation. As a minor note to the first paragraph of the EIA, the department and the board are currently in the process of updating all of their building and fire related construction and maintenance regulations.

Summary:

The proposed amendments (i) clarify the contents of a department list and (ii) correct a typo.

13VAC5-21-41. Certification categories and training requirements.

A. The department maintains a list of all certificates offered and the list sets out the ~~required training necessary to attend and complete~~ required to be completed to obtain a each certificate. Alternatives to the training requirements set out in 13VAC5-21-45 shall be considered for all certificates offered except that no alternative shall be accepted for the code academy core module.

B. Applicants for certificates shall attend and complete the code academy core module. After the completion of the core module, applicants are required to attend and complete the code academy training as set out in a list maintained by the department, except as provided for in 13VAC5-21-45. All required training must be completed within no more than six years prior to the date the application is submitted and the requirements for training are based on those in effect at the time of application.

13VAC5-21-45. Alternatives to training requirements.

Upon written request, alternative training or a combination of training, education or experience to satisfy the training requirements of 13VAC5-21-41 may be approved, provided that such alternatives or combinations are determined to be equivalent to that required. However, as provided in 13VAC5-21-41, no substitutions shall be approved for the code academy core module. The types of combinations of education and experience may include military training, college classes, technical schools or long-term work experiences, except that long-term work experiences shall not be approved as the sole substitute to satisfy the training requirements. BCAAC may be consulted ~~with~~ in any such consideration.

VA.R. Doc. No. R19-5980; Filed August 17, 2020, 2:14 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from Article 2 of the Administrative Process Act pursuant to § 2.2-4006 A 12 of the Code of Virginia, which excludes regulations adopted by the board pursuant to the Statewide Fire Prevention Code (§ 27-94 et seq.), the Industrialized Building Safety Law (§ 36-70 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and § 36-98.3 of the Code of Virginia, provided the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (iii) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. The Board of

Housing and Community Development will receive, consider, and respond to petitions regarding 13VAC5-63-210 by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-210).

Statutory Authority: § 36-98 of the Code of Virginia.

Public Hearing Information:

September 28, 2020 - 10 a.m. - Google Meet Meeting - The link to access the electronic meeting is meet.google.com/rqj-cmsq-rft, or copy and paste the link into a browser. Additional details and information are available on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Background: The Uniform Statewide Building Code (USBC) is a regulation governing the construction, maintenance, and rehabilitation of new and existing building and structures. The USBC uses nationally recognized model building codes and standards produced by the International Code Council (ICC) and other standard-writing groups as the basis for the technical provisions of the regulation. Every three years, new editions of the model codes become available. At that time, the Board of Housing and Community Development (BHCD) initiates a regulatory action to incorporate the newest editions of the model codes into the regulation as well as accepting proposals for changes to the regulation from affected client groups and the public.

This proposed phase of the regulatory action only includes 13VAC5-63-210. The text of this section was published correctly in the Virginia Register of Regulations in [Volume 36, Issue 12 on February 3, 2020](#). However, due to a technical error, certain information may not have been present on the Virginia Regulatory Town Hall website -- specifically, 13VAC5-63-210.

Summary:

The proposed substantive amendments to 13VAC5-63-210 do the following:

1. Make several changes to the Residential Code, including updating REScheck to the 2018 International Energy Conservation Code (IECC).

2. Eliminate the deletion of the energy certificate requirement and revise the section to allow the certificate to be kept at an offsite location for multifamily buildings.
3. Remove visual option and require blower door testing for air leakage rate of buildings (5 air changes).
4. Remove prohibition against using building cavities as plenums.
5. Remove the requirement for residential exhaust hoods in kitchens for grease laden vapors as the requirements for this are specified in the International Mechanical Code and do not belong in the IECC.
6. Revise landing/floor height requirement for exterior doors from to 8-1/4 inches.
7. Allow the use of Appendix Q for tiny houses (i.e., dwellings 400 square feet or less).
8. Revise foundation anchorage language to match the International Building Code.
9. Clarify that only one foundation vent is required within three feet of each corner.
10. Add an option for relining existing building sewers and building draining piping.
11. Add an option to provide a notice by electronic means for a local board of building code appeals hearing.
12. Change the minimum slope from two percent to one percent for drainage on impervious surfaces within 10 feet of the building foundation.

Other proposed changes update citations to incorporated codes and statutes, reorganize standards for a more appropriate placement in the code, or clarify or correlate provisions.

13VAC5-63-210. Chapter 3 Use and occupancy classification.

- A. Change Sections 303.1.1 and 303.1.2 of the IBC to read:
- 303.1.1 Small buildings and tenant spaces. A building or tenant space used for assembly purposes with an occupant load of less than 50 persons shall be permitted to be classified as a Group B occupancy.
 - 303.1.2 Small assembly spaces. The following rooms and spaces shall be permitted to be classified as Group B occupancies or as part of the assembly occupancy:
 1. A room or space used for assembly purposes with an occupant load of less than 50 persons and ancillary to another occupancy.
 2. A room or space used for assembly purposes that is less than 750 square feet (70 m²) in area and ancillary to another occupancy.

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B. Change Section 303.6 of the IBC to read:

303.6 Assembly Group A-5. Assembly uses intended for participation in or viewing outdoor activities including, ~~but not limited to:~~

- Amusement park structures
- Bleachers
- Grandstands
- Stadiums
- Swimming pools

C. Add Section 304.1.1 to the IBC to read:

304.1.1 Day support and day treatment facilities. Day support and day treatment facilities licensed by the Virginia Department of Behavioral Health and Developmental Services shall be permitted to be classified as Group B occupancies provided all of the following conditions are met:

1. Participants who may require physical assistance from staff to respond to an emergency situation shall be located on the level of exit discharge.

2. Any change in elevation within the exit access on the level of exit discharge shall be made by means of a ramp or sloped walkway.

3. Where the facilities are located more than two stories above grade, an automatic sprinkler system shall be provided throughout the building in accordance with Section 903.3.1.1.

D. Change ~~exception~~ Exception 14 of Section 307.1.1 of the IBC and add ~~exception 15~~ Exception 18 to Section 307.1.1 of the IBC to read:

14. The storage of black powder, smokeless propellant and small arms primers in Groups M, R-3 and R-5 and special industrial explosive devices in Groups B, F, M and S, provided such storage conforms to the quantity limits and requirements prescribed in the IFC, as amended in Section 307.9.

~~15. 18.~~ The storage of distilled spirits and wines in wooden barrels and casks. Distillation, blending, bottling, and other hazardous materials storage or processing shall be in separate control areas complying with Section 414.2.

E. Change the "Flammable liquid, combination (IA, IB, IC)" row in Table 307.1(1), add a new "Permissible fireworks" row to Table 307.1(1) of the IBC, and add footnote "r" to Table 307.1(1) of the IBC to read:

Flammable liquid, combination (IA, IB, IC)	NA	H-2 or H-3	NA	120 ^{d,e,h}	NA	NA	120 ^{d,h}	NA	NA	30 ^{d,h,r}
Permissible fireworks	1.4G	H-3	125 ^{d,e,l}	NA	NA	NA	NA	NA	NA	NA

r. The tabular value for distilled spirit distillation and blending rooms is 120 gallons.

F. Add Section 307.9 to the IBC to read:

307.9 Amendments. The following changes shall be made to the IFC for the use of Exception 14 in Section 307.1.1:

1. Change the following definition in Section 202 of the IFC to read:

Smokeless propellants. Solid propellants, commonly referred to as smokeless powders, or any propellants classified by DOTn as smokeless propellants in accordance with NA3178 (Smokeless Powder for Small Arms), used in small arms ammunition, firearms, cannons, rockets, propellant-actuated devices, and similar articles.

2. Change Section 314.1 of the IFC to read as follows:

314.1 General. Indoor displays constructed within any building or structure shall comply with Sections 314.2 through 314.5.

3. Add new Section 314.5 to the IFC to read as follows:

314.5 Smokeless powder and small arms primers. Vendors shall not store, display or sell smokeless powder or small arms primers during trade shows inside exhibition halls except as follows:

1. The amount of smokeless powder each vender may store is limited to the storage arrangements and storage amounts established in Section 5606.5.2.1.

2. Smokeless powder shall remain in the manufacturer's original sealed container and the container shall remain sealed while inside the building. The repackaging of smokeless powder shall not be performed inside the building. Damaged containers shall not be repackaged inside the building and shall be immediately removed from the building in such manner to avoid spilling any powder.

3. There shall be at least 50 feet separation between vendors and 20 feet from any exit.
4. Small arms primers shall be displayed and stored in the manufacturer's original packaging and in accordance with the requirements of Section 5606.5.2.3.
4. Change Exception 4 and add Exceptions 10 and 11 to Section 5601.1 of the IFC as follows:
 4. The possession, storage and use of not more than 15 pounds (6.75 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and any amount of small arms primers for hand loading of small arms ammunition for personal consumption.
 10. The display of small arms primers in Group M when in the original manufacturer's packaging.
 11. The possession, storage and use of not more than 50 pounds (23 kg) of commercially manufactured sporting black powder, 100 pounds (45 kg) of smokeless powder, and small arms primers for hand loading of small arms ammunition for personal consumption in Group R-3 or R-5, or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5.
5. Change Section 5606.4 of the IFC to read as follows:

5606.4 Storage in residences. Propellants for personal use in quantities not exceeding 50 pounds (23 kg) of black powder or 100 pounds (45 kg) of smokeless powder shall be stored in original containers in occupancies limited to ~~Group~~ Groups R-3 and R-5 or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5. In other than Group R-3 or R-5, smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) shall be kept in a wooden box or cabinet having walls of at least one inch (25 mm) nominal thickness or equivalent.
6. Delete Sections 5606.4.1 and 5606.4.2 of the IFC.
7. Change Section 5606.5.1.1 of the IFC to read as follows:

5606.5.1.1 Smokeless propellant. No more than 100 pounds (45 kg) of smokeless propellants in containers of eight pounds (3.6 kg) or less capacity shall be displayed in Group M occupancies.
8. Delete Section 5606.5.1.3 of the IFC.
9. Change Section 5606.5.2.1 of the IFC as follows:

5606.5.2.1 Smokeless propellant. Commercial stocks of smokeless propellants shall be stored as follows:

1. Quantities exceeding 20 pounds (9 kg), but not exceeding 100 pounds (45 kg) shall be stored in portable wooden boxes having walls of at least one inch (25 mm) nominal thickness or equivalent.
2. Quantities exceeding 100 pounds (45 kg), but not exceeding 800 pounds (363 kg), shall be stored in storage cabinets having walls at least one inch (25 mm) nominal thickness or equivalent. Not more than 400 pounds (182 kg) shall be stored in any one cabinet, and cabinets shall be separated by a distance of at least 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of at least one hour.
3. Storage of quantities exceeding 800 pounds (363 kg), but not exceeding 5,000 pounds (2270 kg) in a building shall comply with all of the following:
 - 3.1. The warehouse or storage room is ~~inaccessible~~ not open to unauthorized personnel.
 - 3.2. Smokeless propellant shall be stored in nonportable storage cabinets having wood walls at least one inch (25 mm) nominal thickness or equivalent and having shelves with no more than 3 feet (914 mm) of vertical separation between shelves.
 - 3.3. No more than 400 pounds (182 kg) is stored in any one cabinet.
 - 3.4. Cabinets shall be located against walls with at least 40 feet ~~(12,192)~~ (12,192) mm between cabinets. The minimum required separation between cabinets may be reduced to 20 feet (6096 mm) provided that barricades twice the height of the cabinets are attached to the wall, midway between each cabinet. The barricades must extend a minimum of 10 feet (3048 mm) outward, be firmly attached to the wall, and be constructed of steel not less than 0.25 inch thick (6.4 mm), 2-inch (51 mm) nominal thickness wood, brick, or concrete block.
 - 3.5. Smokeless propellant shall be separated from materials classified as combustible liquids, flammable liquids, flammable solids, or oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of 1 hour.
 - 3.6. The building shall be equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.
4. Smokeless propellants not stored according to Item 1, 2, or 3 above shall be stored in a Type 2 or 4 magazine in accordance with Section 5604 and NFPA 495.

~~G. Add the following to the list of terms in Section 308.2 of the IBC:~~

~~Hospice facility~~

~~H. G. Change Section 308.3 308.2 of the IBC to read:~~

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~~308.3~~ 308.2 Institutional Group I-1. This occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1, other than assisted living facilities licensed by the Virginia Department of Social Services, shall be classified as the occupancy condition indicated in Section ~~308.3.1~~ 308.2.1. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancy conditions indicated in Section ~~308.3.1~~ 308.2.1 or ~~308.3.2~~ 308.2.2. This group shall include, ~~but not be limited to~~, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Group homes
- Halfway houses
- Residential board and care facilities
- Social rehabilitation facilities

~~F. H.~~ Change Sections ~~308.3.1~~ 308.2.1 and ~~308.3.2~~ 308.2.2 of the IBC to read:

~~308.3.1~~ 308.2.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation. Not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance reside on a single level of exit discharge.

~~308.3.2~~ 308.2.2 Condition 2. This occupancy condition shall include buildings in which there are persons receiving custodial care who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation. Five of the residents may require physical assistance from more than one staff member to respond to an emergency.

~~F. I.~~ Change Section ~~308.4~~ 308.3 of the IBC to read:

~~308.4~~ 308.3 Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, ~~but not be limited to~~, the following:

- Convalescent facilities
- Detoxification facilities
- Foster care facilities
- Hospice facilities

Hospitals

Nursing homes

Psychiatric hospitals

Exception: Hospice facilities occupied by 16 or less occupants, excluding staff, are permitted to be classified as Group R-4.

~~K. J.~~ Add an exception to Section ~~308.6~~ 308.5 of the IBC to read:

Exception: Family day homes under Section ~~310.9~~ 310.8.

~~L. K.~~ Change Section ~~310.3~~ 310.2 of the IBC to read:

~~310.3~~ 310.2 Residential Group R-1. Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

- Boarding houses (transient) with more than 10 occupants
- Congregate living facilities (transient) with more than 10 occupants
- Hotels (transient)
- Motels (transient)

Exceptions:

1. Nonproprietor occupied bed and breakfast and other transient boarding facilities not more than three stories above grade plane in height with a maximum of 10 occupants total are permitted to be classified as either Group R-3 or R-5 provided that smoke alarms are installed in compliance with Section ~~907.2.11.2~~ 907.2.10.2 for Group R-3 or Section R314 of the IRC for Group R-5.

2. Proprietor occupied bed and breakfast and other transient boarding facilities not more than three stories above grade plane in height, that are also occupied as the residence of the proprietor, with a maximum of five guest room sleeping units provided for the transient occupants are permitted to be classified as either Group R-3 or R-5 provided that smoke alarms are installed in compliance with Section ~~907.2.11.2~~ 907.2.10.2 for Group R-3 or Section R314 of the IRC for Group R-5.

~~M. L.~~ Change Section ~~310.6~~ 310.5 of the IBC to read:

~~310.6~~ 310.5 Residential Group R-4. This occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group R-4, other than assisted living facilities licensed by the Virginia Department of Social Services, shall be classified as the occupancy condition indicated in Section ~~310.6.1~~ 310.5.1. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of

the occupancy conditions indicated in Section ~~310.6.1~~ 310.5.1 or ~~310.6.2~~ 310.5.2. This group shall include, ~~but not be limited to~~ the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Group homes
- Halfway houses
- Residential board and care facilities
- Social rehabilitation facilities

This occupancy shall also include hospice facilities with not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.

Exceptions:

1. Group homes licensed by the Virginia Department of Behavioral Health and Developmental Services that house no more than eight persons with one or more resident counselors shall be classified as Group R-2, R-3, R-4 or R-5. Not more than five of the persons may require physical assistance from staff to respond to an emergency situation.
2. In Group R-4 occupancies classified as the occupancy condition indicated in Section ~~310.6.1~~ 310.5.1, other than in hospice facilities, not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance from staff reside on a single level of exit discharge and other than using a ramp, a change of elevation using steps or stairs is not within the path of egress to an exit door.
3. Assisted living facilities licensed by the Virginia Department of Social Services that house no more than eight persons, with one or more resident counselors, and all of the residents are capable of responding to an emergency situation without physical assistance from staff, may be classified as Group R-2, R-3 or R-5.
4. Assisted living facilities licensed by the Virginia Department of Social Services that house no more than eight persons, with one or more resident counselors, may be classified as Group R-5 when in compliance with all of the following:
 - 4.1. The building is protected by an automatic sprinkler system installed in accordance with Section 903.3 or Section P2904 of the IRC.
 - 4.2. Not more than five of the residents may require physical assistance from staff to respond to an emergency situation.
 - 4.3. All residents who may require physical assistance from staff to respond to an emergency situation reside on a single level of exit discharge and other than using a ramp, a change in elevation using steps or stairs is not within the path of egress to an exit door.
 5. Hospice facilities with five or fewer occupants are permitted to comply with the IRC provided the building is protected by an automatic sprinkler system in accordance with IRC Section P2904 or IBC Section 903.3.

~~N. M.~~ Change Sections ~~310.6.1~~ 310.5.1 and ~~310.6.2~~ 310.5.2 to the IBC to read:

~~310.6.1~~ 310.5.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation and hospice facilities.

~~310.6.2~~ 310.5.2 Condition 2. This occupancy condition shall include buildings in which there are persons receiving custodial care who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation.

~~O. N.~~ Add Section ~~310.7~~ 310.6 to the IBC to read:

~~310.7~~ 310.6 Residential Group R-5. Residential occupancies in detached single-family and two-family dwellings, townhouses and accessory structures within the scope of the IRC.

~~P. Q.~~ Add Section ~~310.8~~ 310.7 to the IBC to read:

~~310.8~~ Group R-5. The construction of Group R-5 structures shall comply with the IRC. The amendments to the IRC set out in Section ~~310.11~~ 310.10 shall be made to the IRC for its use as part of this code. In addition, all references to the IRC in the IBC shall be considered to be references to this section.

~~Q. P.~~ Add Section ~~310.8.1~~ 310.7.1 to the IBC to read:

~~310.8.1~~ 310.7.1 Additional requirements. Methods of construction, materials, systems, equipment or components for Group R-5 structures not addressed by prescriptive or performance provisions of the IRC shall comply with applicable IBC requirements.

~~R. Q.~~ Add Section ~~310.9~~ 310.8 to the IBC to read:

~~310.9~~ 310.8 Family day homes. Family day homes where program oversight is provided by the Virginia Department of Social Services shall be classified as Group R-2, R-3 or R-5.

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Note: Family day homes may generally care for up to 12 children. See the DHCD Related Laws Package for additional information.

S. R. Add Section ~~310.10~~ 310.9 to the IBC to read:

~~310.10~~ 310.9 Radon-resistant construction in Groups R-3 and R-4 structures. Groups R-3 and R-4 structures shall be subject to the radon-resistant construction requirements in Appendix F of the IRC in localities enforcing such requirements pursuant to Section R324 of the IRC.

T. S. Add Section ~~310.11~~ 310.10 to the IBC to read:

~~310.11~~ 310.10 Amendments to the IRC. The following changes shall be made to the IRC for its use as part of this code:

1. Add the following definitions to read:

Living area. Space within a dwelling unit utilized for living and entertainment, including family rooms, great rooms, living rooms, dens, media rooms, and similar spaces.

Nonpotable fixtures and outlets. Fixtures and outlets that are not dependent on potable water for the safe operation to perform their intended use. Such fixtures and outlets may include, ~~but are not limited to~~ water closets, urinals, irrigation, mechanical equipment, and hose connections to perform operations, such as vehicle washing and lawn maintenance.

Nonpotable water systems. Water systems for the collection, treatment, storage, distribution, and use or reuse of nonpotable water. Nonpotable systems include reclaimed water, rainwater, and gray water systems.

Rainwater. Natural precipitation, including snow melt, from roof surfaces only.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

2. Change the following definitions to read:

Attic, habitable. A finished or unfinished area, not considered a story, complying with all of the following requirements:

1. The occupiable floor area is at least 70 square feet (17 m²), in accordance with Section R304,
2. The occupiable floor area has a ceiling height in accordance with Section R305, and
3. The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.

Habitable attics greater than two-thirds of the area of the story below or over 400 square feet (37.16 m²) shall not be permitted in dwellings or townhouses that are three stories above grade plane in height.

Gray water. Water discharged from lavatories, bathtubs, showers, clothes washers, and laundry trays.

3. Change Section R301.2.1 to read:

R301.2.1 Wind design criteria. Buildings and portions thereof shall be constructed in accordance with the wind provisions of this code using the ultimate design wind speed in Table R301.2(1) as determined from Figure ~~R301.2(4)A~~ R301.2(5)A. The structural provisions of this code for wind loads are not permitted where wind design is required as specified in Section R301.2.1.1. Where different construction methods and structural materials are used for various portions of a building, the applicable requirements of this section for each portion shall apply. Where not otherwise specified, the wind loads listed in Table R301.2(2) adjusted for height and exposure using Table R301.2(3) shall be used to determine design load performance requirements for wall coverings, curtain walls, roof coverings, exterior windows, skylights, garage doors, and exterior doors. Asphalt shingles shall be designed for wind speeds in accordance with Section R905.2.4. A continuous load path shall be provided to transmit the applicable uplift forces in Section R802.11.1 from the roof assembly to the foundation. Wind speeds for localities in special wind regions, near mountainous terrain, and near gorges shall be based on elevation. Areas at 4,000 feet in elevation or higher shall use the nominal design wind speed of 110 mph (48.4 m/s) and areas under 4,000 feet in elevation shall use nominal design wind speed of 90 mph (39.6 m/s). Gorge areas shall be based on the highest recorded speed per locality or in accordance with local jurisdiction requirements determined in accordance with Section 26.5.1 of ASCE 7.

4. Add Exceptions 6 and 7 to Section R302.1 to read:

6. Decks and open porches.

7. Walls of dwellings and accessory structures located on lots in subdivisions or zoning districts where building setbacks established by local ordinance prohibit the walls of the structures on adjacent lots from being closer than 10 feet (3048 mm) to each other at any point along the exterior walls.

5. Add the following sentence to the end of Section R302.3 to read:

Dwelling unit separation wall assemblies that are constructed on a lot line shall be constructed as required in Section R302.2 for townhouses.

6. Change Section R302.5.1 to read ~~and delete Section R302.13 in its entirety~~:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1-3/8 inches (35 mm) thickness, solid or honeycomb-core steel doors not less than 1-3/8 inches (35 mm) thick, or 20-minute fire-rated doors.

7. Delete Section R302.13 in its entirety.

8. Change Section R303.4 to read:

R303.4 Mechanical ventilation. Dwelling units shall be provided with mechanical ventilation in accordance with Section ~~M1507~~ M1505.

8. 9. Add an exception to Section R303.10 to read:

Exception: Seasonal structures not used as a primary residence for more than 90 days per year, unless rented, leased or let on terms expressed or implied to furnish heat, shall not be required to comply with this section.

9. 10. Add Section R303.10.1 to read:

R303.10.1 Nonowner occupied required heating. Every dwelling unit or portion thereof which is to be rented, leased or let on terms either expressed or implied to furnish heat to the occupants thereof shall be provided with facilities in accordance with Section ~~R303.9~~ R303.10 during the period from October 15 to May 1.

10. 11. Add Section R303.11 to read:

R303.11 Insect screens. Every door, window and other outside opening required for ventilation purposes shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

11. 12. Add Section R306.5 to read:

R306.5 Water supply sources and sewage disposal systems. The water and drainage system of any building or premises where plumbing fixtures are installed shall be connected to a public or private water supply and a public or private sewer system. As provided for in Section 103.5 of Part I of the Virginia Uniform Statewide Building Code (13VAC5-63), for functional design, water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health and the Virginia Department of Environmental Quality.

Note: See also the Memorandums of Agreement in the "Related Laws Package," which is available from the Virginia Department of Housing and Community Development.

12. 13. Change Section R308.4.5 to read:

R308.4.5 Glazing and wet surfaces. Glazing in walls, enclosures, or fences containing or facing hot tubs, spas, whirlpools, saunas, steam rooms, bathtubs, showers, and indoor or outdoor swimming pools shall be considered a hazardous location if located less than 60 inches (1524 mm) measured horizontally, in a straight line, from the water's edge and the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing or walking surface. This shall apply to single glazing and each pane in multiple glazing.

13. 14. Change Section R310.1 to read:

R310.1 Emergency escape and rescue opening required. Basements, habitable attics, and every sleeping room designated on the construction documents shall have not less than one operable emergency escape and rescue opening. Where basements contain one or more sleeping rooms, an emergency egress and rescue opening shall be required in each sleeping room. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

Exceptions:

1. Dwelling units equipped throughout with an approved automatic sprinkler system installed in accordance with NFPA 13, 13R, or 13D or Section P2904.
2. Storm shelters and basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m²).

14. 15. Change Section R310.2.1 to read:

R310.2.1 Minimum opening area. Emergency and escape rescue openings shall have a net clear opening of not less than 5.7 square feet (0.530 m²). The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside, including the tilting or removal of the sash as the normal operation. The net clear height opening shall be not less than 24 inches (610 mm), and the net clear width shall be not less than 20 inches (508 mm).

Exception: Grade floor or below grade openings shall have a net clear opening of not less than 5 square feet (0.465 m²).

15. 16. Change the exception ~~in~~ to Section R311.3.1 to read:

Exception: The landing or floor on the exterior side shall not be more than 8-1/4 inches (210 mm) below the top of the threshold provided the door does not swing over the landing or floor.

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~~46-~~ 17. Change Section R311.3.2 to read:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than 8-1/4 inches (210 mm) below the top of the threshold.

Exception: A top landing is not required where a stairway of not more than two risers is located on the exterior side of the door, if that door does not swing over the stairway.

18. Change Section R311.7.5.1 to read:

R311.7.5.1 Risers. The riser height shall be not more than 8-1/4 inches (210 mm). The riser shall be measured vertically between the leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Risers shall be vertical or sloped from the underside of the nosing of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted provided that the openings located more than 30 inches (763 mm), as measured vertically, to the floor or grade below do not permit the passage of a 4-inch-diameter (102 mm) sphere.

Exceptions:

1. The opening between adjacent treads is not limited on spiral stairways.
2. The riser height of spiral stairways shall be in accordance with Section R311.7.10.1.

~~47-~~ 19. Change Section R311.7.5.2 to read:

R311.7.5.2 Treads. The tread depth shall be not less than 9 inches (229 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

~~48-~~ 20. Change Section R311.7.7 to read:

R311.7.7 Stairway walking surface. The walking surface of treads and landings of stairways shall be level or sloped no steeper than one unit vertical in 48 units horizontal (2.0% slope).

~~49-~~ 21. Change Section R312.2.1 to read:

R312.2.1 Window sills. In dwelling units, where the top of the sill of an operable window opening is located less than 18 inches (457 mm) above the finished floor and greater than 72 inches (1829 mm) above the finished grade or other surface below on the exterior of the building, the operable window shall comply with one of the following:

1. Operable windows with openings that will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening where the opening is in its largest opened position.

2. Operable windows that are provided with window fall prevention devices that comply with ASTM F 2090.

3. Operable windows that are provided with window opening control devices that comply with Section R312.2.2.

~~20-~~ 22. Replace Section R313 with the following:

Section R313.

Automatic Fire Sprinkler Systems.

R313.1 Townhouse automatic fire sprinkler systems. Notwithstanding the requirements of Section 103.3, where installed, an automatic residential fire sprinkler system for townhouses shall be designed and installed in accordance with NFPA 13D or Section P2904.

Exception: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

R313.2 One-family and two-family dwellings automatic fire sprinkler systems. Notwithstanding the requirements of Section 103.3, where installed, an automatic residential fire sprinkler system shall be designed and installed in accordance with NFPA 13D or Section P2904.

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential fire sprinkler system.

~~21-~~ 23. Delete Section R314.2.2.

~~22-~~ 24. Change Section R314.7.3 to read:

R314.7.3 Permanent fixture. Where a household fire alarm system is installed, it shall become a permanent fixture of the dwelling unit.

~~23-~~ 25. Change Section R315.1.1 to read:

R315.1.1 Listings. Carbon monoxide alarms shall be hard wired, plug-in or battery type; listed as complying with UL 2034; and installed in accordance with this code and the manufacturer's installation instructions. Combination carbon monoxide and smoke alarms shall be listed in accordance with UL 2034 and UL 217.

~~24-~~ 26. Change Section R315.2 to read:

R315.2 Where required. Carbon monoxide alarms shall be provided in accordance with this section.

~~25-~~ 27. Delete Section R315.2.2.

~~26.~~ 28. Delete Section ~~R315.5~~ R315.6.

~~27.~~ 29. Change Section ~~R315.6.3~~ R315.7.3 to read:

~~R315.6.3~~ R315.7.3 Permanent fixture. Where a household carbon monoxide detection system is installed, it shall become a permanent fixture of the occupancy.

~~28.~~ 30. Add Section R320.2 to read:

R320.2 Universal design features for accessibility in dwellings. Dwellings constructed under the IRC not subject to Section R320.1 may comply with Section 1109.16 of the USBC and be approved by the local building department as dwellings containing universal design features for accessibility.

~~29.~~ 31. Add Section R326.1.1 to read:

R326.1.1 Changes to the ISPSC. The following change shall be made to the ISPSC:

1. Change Section 305.2.9 to read:

305.2.9 Equipment clear zone. Equipment, including pool equipment such as pumps, filters, and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.

~~30.~~ 32. Add Section ~~R327~~ R328 Radon-Resistant Construction.

~~31.~~ 33. Add Section ~~R327.1~~ R328.1 to read:

~~R327.1~~ R328.1 Local enforcement of radon requirements. Following official action under Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia by a locality in areas of high radon potential, as indicated by Zone 1 on the U.S. EPA Map of Radon Zones (IRC Figure AF101), such locality shall enforce the provisions contained in Appendix F.

Exception: Buildings or portions thereof with crawl space foundations which are ventilated to the exterior, shall not be required to provide radon-resistant construction.

~~32.~~ 34. Add Section ~~R328~~ R329 Patio Covers.

~~33.~~ 35. Add Section ~~R328.1~~ R329.1 to read:

~~R328.1~~ R329.1 Use of Appendix H for patio covers. Patio covers shall comply with the provisions in Appendix H.

~~34.~~ 36. Add Section ~~R329~~ R330 Sound Transmission.

~~35.~~ 37. Add Section ~~R329.1~~ R330.1 to read:

~~R329.1~~ R330.1 Sound transmission between dwelling units. Construction assemblies separating dwelling units shall provide airborne sound insulation as required in Appendix K.

~~36.~~ 38. Add Section ~~R329.2~~ R330.2 to read:

~~R329.2~~ R330.2 Airport noise attenuation. This section applies to the construction of the exterior envelope of detached one-family and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress within airport noise zones when enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia. The exterior envelope of such structures shall comply with Section ~~1207.4~~ 1206.4 of the state amendments to the IBC.

~~37.~~ 39. Add Section ~~R330~~ R331 Fire Extinguishers.

~~38.~~ 40. Add Section ~~R330.1~~ R331.1 to read:

~~R330.1~~ R331.1 Kitchen areas. Other than where the dwelling is equipped with an approved sprinkler system in accordance with Section R313, a fire extinguisher having a rating of 2-A:10-B:C or an approved equivalent type of fire extinguisher shall be installed in the kitchen area.

~~39.~~ 41. Add Section ~~R331~~ R332 Interior Passage.

~~40.~~ 42. Add Sections ~~R331.1~~ R332.1 through ~~R331.6~~ R332.6 to read:

~~R331.1~~ R332.1 General. This section applies to new dwelling units that have both a kitchen and a living area on the same floor level as the egress door required by Section R311.2. This section is not applicable to additions, reconstruction, alteration, or repair.

~~R331.2~~ R332.2 Kitchen. One interior passage route from the egress door to the kitchen shall comply with ~~R331.6~~ R332.6.

~~R331.3~~ R332.3 Living area. One interior passage route from the egress door to at least one living area shall comply with ~~R331.6~~ R332.6.

~~R331.4~~ R332.4 Bedroom. Where the dwelling unit has a bedroom on the same floor level as the egress door, one interior passage route from the egress door to at least one bedroom shall comply with ~~R331.6~~ R332.6.

~~R331.5~~ R332.5 Bathroom. Where a dwelling unit has a bathroom on the same floor level as the egress door, and the bathroom contains a water closet, lavatory, and bathtub or shower, one interior passage route from the egress door to at least one bathroom shall comply with ~~R331.6~~ R332.6. Bathroom fixture clearances shall comply with R307 and access to fixtures is not required to comply with ~~R331.6~~ R332.6.

~~R331.6~~ R332.6 Opening widths. Opening widths along the interior passage route required by this section shall comply with the following:

1. Cased openings shall provide a minimum 34 inch (864 mm) clear width.

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2. Doors shall be a nominal 34 inch (864 mm) minimum width. Double doors are permitted to be used to meet this requirement.

43. Add Section R333 Tiny Houses.

44. Add Section R333.1 to read:

R333.1 General. Appendix Q may be used as an alternative to the requirements of this code where a dwelling is 400 square feet (37 m²) or less in floor area.

~~44.~~ 45. Change Section R401.3 to read:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard to the dwelling unit. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of six inches (152 mm) within the first 10 feet (3048 mm).

Exception: Where lot lines, walls, slopes or other physical barriers prohibit six inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of ~~2.0%~~ 1.0% away from the building.

~~42.~~ 46. Add the following exceptions to Section R403.1 to read:

Exceptions:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, not exceeding 256 square feet (23.7824 m²) of building area, provided all of the following conditions are met:

- 1.1. The building eave height is 10 feet or less.
- 1.2. The maximum height from the finished floor level to grade does not exceed 18 inches.
- 1.3. The supporting structural elements in direct contact with the ground shall be placed level on firm soil and when such elements are wood they shall be approved pressure preservative treated suitable for ground contact use.
- 1.4. The structure is anchored to withstand wind loads as required by this code.
- 1.5. The structure shall be of light-frame construction whose vertical and horizontal structural elements are primarily formed by a system of repetitive wood or light gauge steel framing members, with walls and roof of light weight material, not slate, tile, brick or masonry.

2. Footings are not required for ramps serving dwelling units in ~~Group~~ Groups R-3 and R-5 occupancies where the height of the entrance is no more than 30 inches (762 mm) above grade.

47. Change Section R403.1.6 to read:

R403.1.6 Foundation anchorage. Wood sill plates and wood walls supported directly on continuous foundations shall be anchored to the foundation in accordance with this section.

Cold-formed steel framing shall be anchored directly to the foundation or fastened to wood sill plates in accordance with Section R505.3.1 or R603.3.1, as applicable. Wood sill plates supporting cold-formed steel framing shall be anchored to the foundation in accordance with this section.

Wood foundation plates or sills shall be bolted or anchored to the foundation with not less than 1/2-inch-diameter (12.7 mm) steel bolts or approved anchors spaced to provide equivalent anchorage as the steel bolts. Bolts shall be embedded not less than 7 inches (178 mm) into concrete or grouted cells of concrete masonry units. The bolts shall be located in the middle third of the width of the plate. Bolts shall be spaced not more than 6 feet (1829 mm) on center and there shall be not less than two bolts or anchor straps per piece with one bolt or anchor strap located not more than 12 inches (305 mm) or less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate. Interior bearing wall sole plates on monolithic slab foundation that are not part of a braced wall panel shall be positively anchored with approved fasteners. Sill plates and sole plates shall be protected against decay and termites where required by Sections R317 and R318.

Exceptions:

1. Walls 24 inches (610 mm) total length or shorter connecting offset braced wall panels shall be anchored to the foundation with not fewer than one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).

2. Connection of walls 12 inches (305 mm) total length or shorter connecting offset braced wall panels to the foundation without anchor bolts shall be permitted. The wall shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).

~~43.~~ 48. Delete Section R404.1.9.2.

49. Change Sections R408.1, R408.2, and R408.3 to read:

R408.1 Moisture control. The under-floor space between the bottom of the floor joists and the earth under any building (except space occupied by a basement) shall comply with Section R408.2 or R408.3.

R408.2 Openings for under-floor ventilation. Ventilation openings through foundation or exterior walls

surrounding the under-floor space shall be provided in accordance with this section. The minimum net area of ventilation openings shall be not less than 1 square foot (0.0929 m²) for each 150 square feet (14 m²) of under-floor area. One ventilation opening shall be within 3 feet (915 mm) of each external corner of the under-floor space. Ventilation openings shall be covered for their height and width with any of the following materials provided that the least dimension of the covering shall not exceed 1/4 inch (6.4 mm), and operational louvers are permitted:

1. Perforated sheet metal plates not less than 0.070 inch (1.8 mm) thick.
2. Expanded sheet metal plates not less than 0.047 inch (1.2 mm) thick.
3. Cast-iron grill or grating.
4. Extruded load-bearing brick vents.
5. Hardware cloth of 0.035 inch (0.89 mm) wire or heavier.
6. Corrosion-resistant wire mesh, with the least dimension being 1/8 inch (3.2 mm) thick.

Exceptions:

1. The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material.
2. Where the ground surface is covered with an approved Class I vapor retarder material, ventilation openings are not required to be within 3 feet (915 mm) of each external corner of the under-floor space provided the openings are placed to provide cross ventilation of the space.

R408.3 Unvented crawl space. For unvented under-floor spaces the following items shall be provided:

1. Exposed earth shall be covered with a continuous Class I vapor retarder. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend not less than 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall or insulation.
2. One of the following shall be provided for the under-floor space:
 - 2.1. Continuously operated mechanical exhaust ventilation at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of crawl space floor area, including an air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

2.2. Conditioned air supply sized to deliver at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of under-floor area, including a return air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

2.3. Plenum in existing structures complying with Section M1601.5, if under-floor space is used as a plenum.

2.4. Dehumidification sized to provide 70 pints (33 liters) of moisture removal per day for every 1,000 square feet (93 m²) of crawl space floor area.

44- 50. Change the exception to Section R408.2 to read:

Exception: The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material and the required openings are placed to provide cross ventilation of the space. The installation of operable louvers shall not be prohibited nor shall the required openings need to be within three feet (915 mm) of each corner provided there is cross ventilation of the space.

45- 51. Add Section R408.3.1 to read:

R408.3.1 Termite inspection. Where an unvented crawl space is installed and meets the criteria in Section R408, the vertical face of the sill plate shall be clear and unobstructed and an inspection gap shall be provided below the sill plate along the top of any interior foundation wall covering. The gap shall be a minimum of one inch (25.4 mm) and a maximum of two inches (50.8 mm) in width and shall extend throughout all parts of any foundation that is enclosed. Joints between the sill plate and the top of any interior wall covering may be sealed.

Exceptions:

1. In areas not subject to damage by termites as indicated by Table R301.2(1).
2. Where other approved means are provided to inspect for potential damage.

Where pier and curtain foundations are installed as depicted in Figure R404.1.5(1), the inside face of the rim joist and sill plate shall be clear and unobstructed except for construction joints which may be sealed.

Exception: Fiberglass or similar insulation may be installed if easily removable.

46- 52. Change Section R506.2.1 to read:

R506.2.1 Fill. Fill material shall be free of vegetation and foreign material and shall be natural nonorganic material that is not susceptible to swelling when exposed to moisture. The fill shall be compacted to assure uniform

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support of the slab, and except where approved, the fill depth shall not exceed 24 inches (610 mm) for clean sand or gravel and 8 inches (203 mm) for earth.

Exception: Material other than natural material may be used as fill material when accompanied by a certification from an RDP and approved by the building official.

~~47-~~ 53. Change Section R506.2.2 to read:

R506.2.2 Base. A 4-inch-thick (102 mm) base course consisting of clean graded sand, gravel or crushed stone passing a 2-inch (51 mm) sieve shall be placed on the prepared subgrade when the slab is below grade.

Exception: A base course is not required when the concrete slab is installed on well drained or sand-gravel mixture soils classified as Group I according to the United Soil Classification System in accordance with Table R405.1. Material other than natural material may be used as base course material when accompanied by a certification from an RDP and approved by the building official.

~~48. Change Item 4 in Table R602.3(1) to read:~~

4	Ceiling joist attached to parallel rafter (heel joint) (see Sections R802.3.1 and R802.3.2 and Table R802.5.1(9))	Table R802.5.2	Face nail
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~~49. Change Table R602.7(1) to read:~~

EDITOR'S NOTE: Table R602.7(1), Girder Spans^a and Header Spans^a for Exterior Bearing Walls, is deleted in its entirety; therefore, the text of Table R602.7(1) is not set out.

~~50. Change Table R602.7(2) to read:~~

EDITOR'S NOTE: Table R602.7(2), Girder Spans^a and Header Spans^a for Interior Bearing Walls, is deleted in its entirety; therefore, the text of Table R602.7(2) is not set out.

~~51-~~ 54. Change Section R602.10 to read:

R602.10 Wall bracing. Buildings shall be braced in accordance with this section or Section R602.12. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.

The building official shall be permitted to require the permit applicant to identify braced wall lines and braced wall panels on the construction documents as described in this section and provide associated analysis. The building official shall be permitted to waive the analysis

of the upper floors where the cumulative length of wall openings of each upper floor wall is less than or equal to the length of the openings of the wall directly below.

~~52-~~ 55. Change Section R602.10.9 to read:

R602.10.9 Braced wall panel support. Braced wall panel support shall be provided as follows:

1. Cantilevered floor joists complying with Section R502.3.3 shall be permitted to support braced wall panels.
2. Raised floor system post or pier foundations supporting braced wall panels shall be designed in accordance with accepted engineering practice.
3. Masonry stem walls with a length of 48 inches (1219 mm) or less supporting braced wall panels shall be reinforced in accordance with Figure R602.10.9. Masonry stem walls with a length greater than 48 inches (1219 mm) supporting braced wall panels shall be constructed in accordance with Section R403.1 Methods ABW and PFH shall not be permitted to attach to masonry stem walls.
4. Concrete stem walls with a length of 48 inches (1219 mm) or less, greater than 12 inches (305 mm) tall and less than 6 inches (152 mm) thick shall have reinforcement sized and located in accordance with Figure R602.10.9.

Exception: For masonry stem walls, an approved post-installed adhesive anchoring system shall be permitted as an alternative to the Optional Stem Wall Reinforcement detail in Figure R602.10.9. A minimum of two anchors shall be installed as indicated in Figure R602.10.9. Anchors shall be located not more than 4 inches (102 mm) from each end of the stem wall. Anchors shall be installed into the concrete footing as follows:

1. Five-eighth inch (16 mm) treaded rod using a 3/4 inch (19 mm) diameter drilled hole with a minimum embedment of 6 inches (152 mm).
2. Number 4 size reinforcing bar using a 5/8-inch (16 mm) diameter drilled hole with a minimum embedment of 4-1/2 inches (114 mm).

A minimum footing thickness of 8 inches (203 mm) is required and the minimum distance from each anchor to the edge of the footing shall be 3-3/4 inches (95 mm). The anchoring adhesive and anchors shall be installed in accordance with the manufacturer's instructions and have a minimum tensile capacity of 5,000 lbs. (22 kN). The bond beam reinforcement and attachment of braced wall panels to the stem wall shall be as shown in Figure R602.10.9.

~~53-~~ 56. Replace Section R602.12, including all subsections, with the following:

R602.12 Practical wall bracing. All buildings in Seismic Design Categories A and B and detached buildings in Seismic Design Category C shall be permitted to be braced in accordance with this section as an alternative to the requirements of Section R602.10. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1. The use of other bracing provisions of Section R602.10, except as specified herein, shall not be permitted.

The building official shall be permitted to require the permit applicant to identify bracing on the construction documents and provide associated analysis. The building official shall be permitted to waive the analysis of the upper floors where the cumulative length of wall openings of each upper floor wall is less than or equal to the length of the openings of the wall directly below.

R602.12.1 Sheathing materials. The following materials shall be permitted for use as sheathing for wall bracing. Exterior walls shall be sheathed on all sheathable surfaces, including infill areas between bracing locations, above and below wall openings, and on gable end walls.

1. Wood structural panels with a minimum thickness of 7/16 inch (9.5 mm) fastened in accordance with Table R602.3(3).
2. Structural fiberboard sheathing with a minimum thickness of 1/2 inch (12.7 mm) fastened in accordance with Table R602.3(1).
3. Gypsum board with a minimum thickness of 1/2 inch (12.7 mm) fastened in accordance with Table R702.3.5 on interior walls only.

R602.12.2 Braced wall panels. Braced wall panels shall be full-height wall sections sheathed with the materials listed in Section R602.12.1 and complying with the following:

1. Exterior braced wall panels shall have a minimum length based on the height of the adjacent opening as specified in Table R602.12.2. Panels with openings on both sides of differing heights shall be governed by the taller opening when determining panel length.
2. Interior braced wall panels shall have a minimum length of 48 inches (1220 mm) when sheathing material is applied to one side. Doubled-sided applications shall be permitted to be considered two braced wall panels.
3. Braced wall panels shall be permitted to be constructed of Methods ABW, PFH, PFG, and CS-PF in accordance with Section R602.10.4.
4. Exterior braced wall panels, other than the methods listed in Item 3 above shall have a finish material

installed on the interior. The finish material shall consist of 1/2 inch (12.7 mm) gypsum board or equivalent and shall be permitted to be omitted where the required length of bracing, as determined in Section R602.12.4, is multiplied by 1.40, unless otherwise required by Section R302.6.

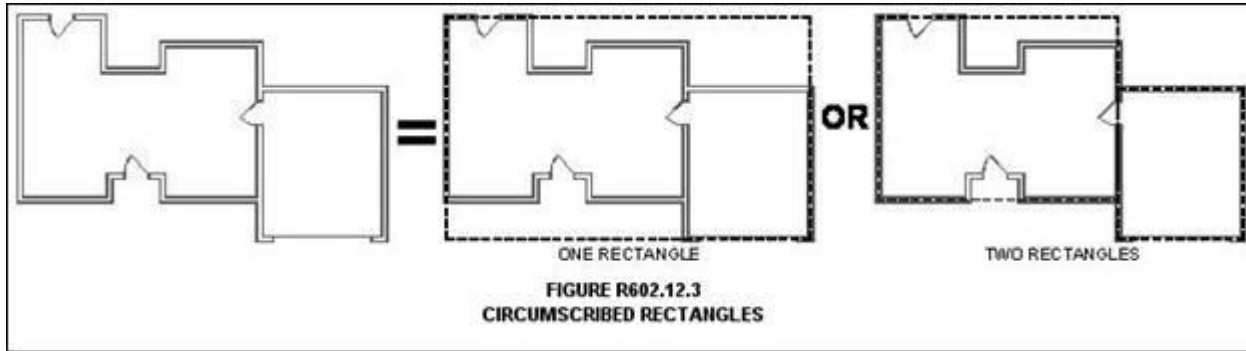
5. Vertical sheathing joints shall occur over and be fastened to common studs.
6. Horizontal sheathing joints shall be edge nailed to 1-1/2 inch (38 mm) minimum thick common blocking.

Table R602.12.2 Braced Wall Panel Lengths					
Location	Wall Height (feet)				
	8	9	10	11	12
	Minimum Panel Length (inches)				
Adjacent garage door of one-story garage ^a	24	27	30	33	36
Adjacent all other openings ^b					
Clear opening height (inches) ≤ 64	24	27	30	33	36
Clear opening height (inches) ≤ 72	27	27	30	33	36
Clear opening height (inches) ≤ 80	30	30	30	33	36
Clear opening height (inches) > 80	36	36	36	40	40
For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.					
a. Braced wall panels supporting a gable end wall or roof load only.					
b. Interpolation shall be permitted.					

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R602.12.3 Circumscribed rectangle. Required length of bracing shall be determined by circumscribing one or more rectangles around the entire building or portions thereof as shown in Figure R602.12.3. Rectangles shall surround all enclosed offsets and projections such as sunrooms and attached garages. Chimneys, partial height projections, and open structures, such as carports and

decks, shall be excluded from the rectangle. Each rectangle shall have no side greater than 80 feet (24,384 mm) with a maximum 3:1 ratio between the long and short side. Rectangles shall be permitted to be skewed to accommodate angled projections as shown in Figure R602.12.4.3.



R602.12.4 Required length of bracing. The required length of bracing for each side of a circumscribed rectangle shall be determined using Table R602.12.4. Where multiple rectangles share a common side or sides, the required length of bracing shall equal the sum of the required lengths from all shared rectangle sides.

Wind Speed	Eave-to-Ridge Height (feet)	Number of Floor Levels Above ^{e,f}	Required Length of Bracing on Front/Rear Side (feet)								Required Length of Bracing on Left/Right Side (feet)							
			Length of Left/Right Side (feet)								Length of Front/Rear Side (feet)							
			10	20	30	40	50	60	70	80	10	20	30	40	50	60	70	80
115	10	0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0
		1 ^d	3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6	3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6
		2 ^d	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4
	15	0	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7
		1 ^d	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2
		2 ^d	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7
	20	0	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6
		1 ^d	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5
		2 ^d	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5
130	10	0	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6
		1 ^d	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0
		2 ^d	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4
	15	0	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1
		1 ^d	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2
		2 ^d	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5
	20	0	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6

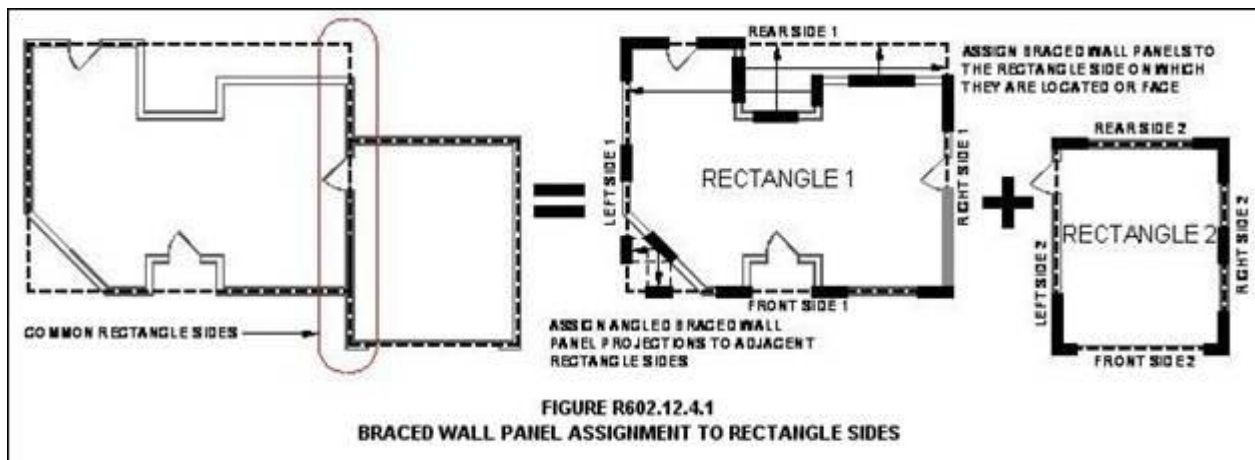
		1 ^d	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3
		2 ^d	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3

For SI: 1 ft = 304.8 mm.

- a. Interpolation shall be permitted; extrapolation shall be prohibited.
- b. For Exposure Category C, multiply the required length of bracing by a factor of 1.20 for a one-story building, 1.30 for a two-story building, and 1.40 for a three-story building.
- c. For wall height adjustments multiply the required length of bracing by the following factors: 0.90 for 8 feet (2438 mm), 0.95 for 9 feet (2743 mm), 1.0 for 10 feet (3048 mm), 1.05 for 11 feet (3353 mm), and 1.10 for 12 feet (3658 mm).
- d. Where braced wall panels supporting stories above have been sheathed in wood structural panels with edge fasteners spaced at 4 inches (102 mm) on center, multiply the required length of bracing by 0.83.
- e. A floor level, habitable or otherwise, contained wholly within the roof rafters or trusses shall not be considered a floor level for purposes of determining the required length of bracing.
- f. A rectangle side with differing number of floor levels above shall use the greatest number when determining the required length of bracing.

R602.12.4.1 Braced wall panel assignment to rectangle sides. Braced wall panels shall be assigned to the applicable rectangle side and contribute to its required length of bracing. Panels shall be assigned as specified below and as shown in Figure R602.12.4.1.

1. Exterior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face.
2. Interior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face up to 4 feet (1220 mm) away. Interior braced wall panels more than 4 feet (1220 mm) away from a parallel rectangle side shall not contribute.
3. The projections of angled braced wall panels shall be assigned to the adjacent rectangle sides.

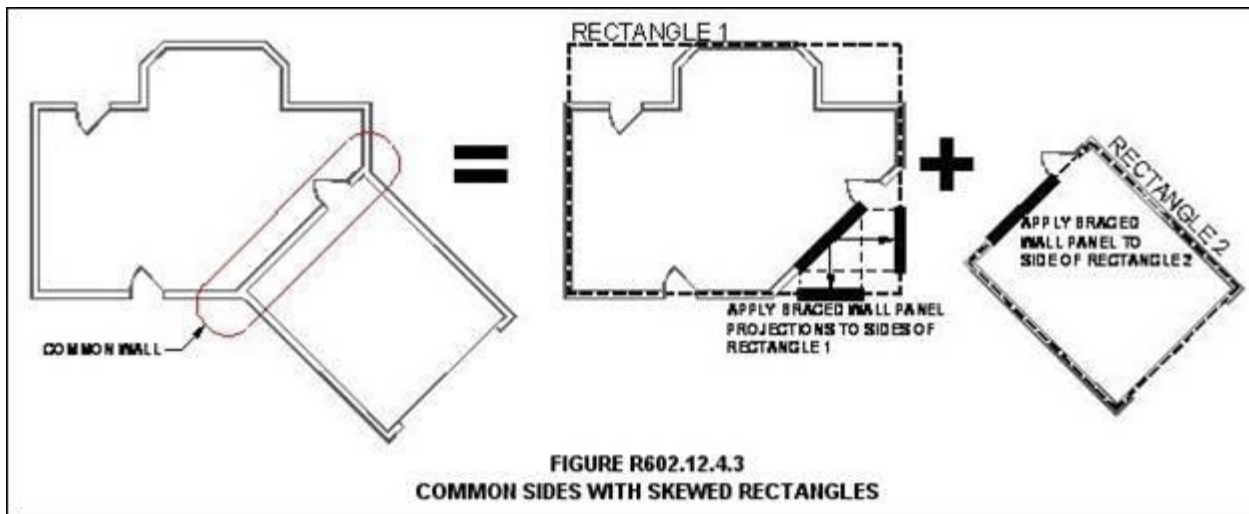


R602.12.4.2 Contributing length. The cumulative contributing length of braced wall panels assigned to a rectangle side shall be greater than or equal to the required length of bracing as determined in Section R602.12.4. The contributing length of a braced wall panel shall be as specified below. When applying contributing length to angled braced wall panels, apply the requirements below to each projection:

1. Exterior braced wall panels shall contribute their actual length.
2. Interior braced wall panels shall contribute one-half of their actual length.
3. The contributing length of Methods ABW, PFH, PFG, and CS-PF shall be in accordance with Table R602.10.5.

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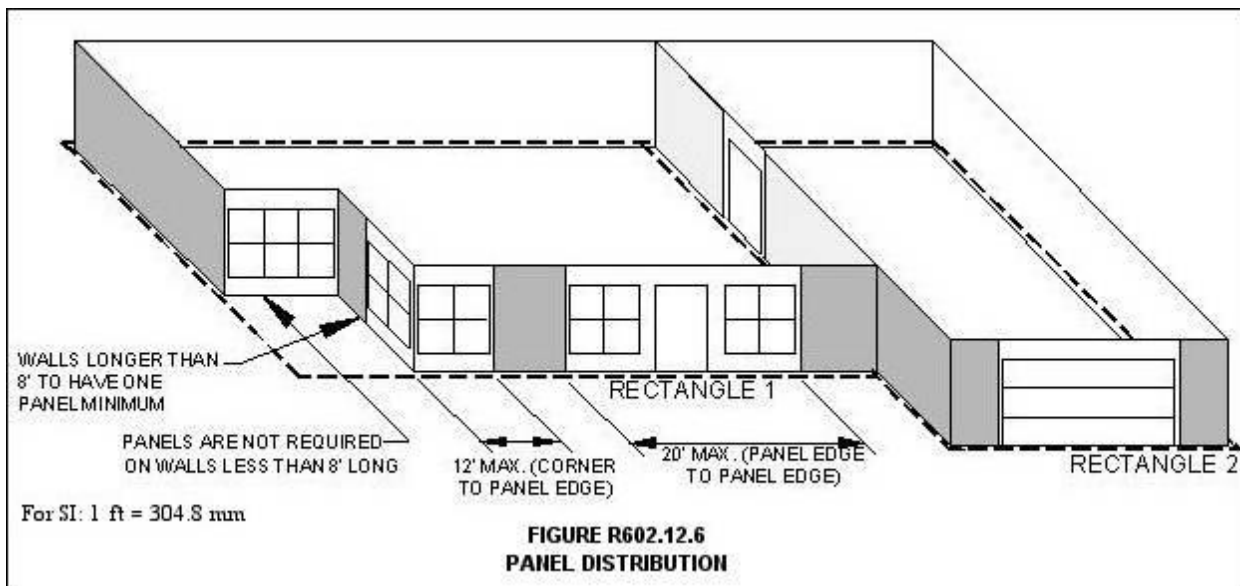
R602.12.4.3 Common sides with skewed rectangles. Braced wall panels located on a common wall where skewed rectangles intersect, as shown in Figure R602.12.4.3, shall be permitted to be assigned to the parallel rectangle side, and their projections shall be permitted to be assigned to the adjacent skewed rectangle sides.

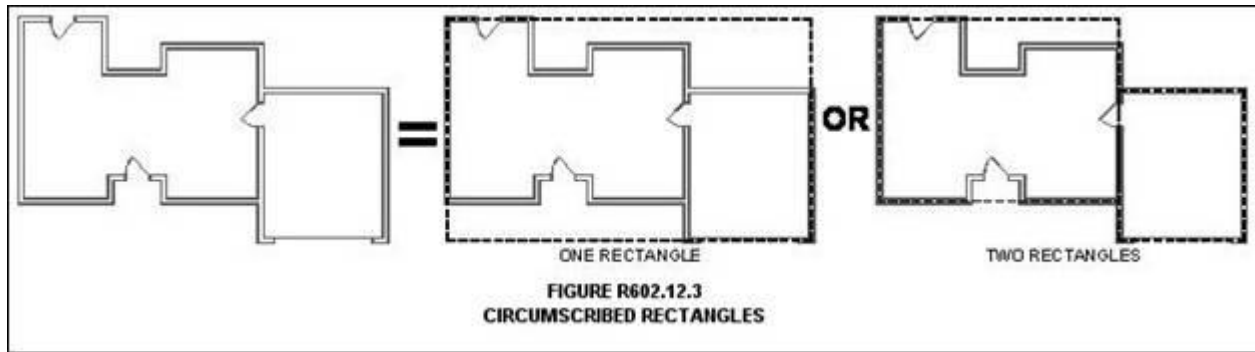


R602.12.5 Cripple walls and framed walls of walk-out basements. For rectangle sides with cripple walls having a maximum height of 48 inches (1220 mm), the required length of bracing shall be as determined in Section R602.12.4. For rectangle sides with cripple walls having a height greater than 48 inches (1220 mm) at any location or framed walls of a walk-out basement, the required length of bracing shall be determined using Table R602.12.4. Braced wall panels within cripple walls and walls of walk-out basements shall comply with Item 4 of Section R602.12.2.

R602.12.6 Distribution of braced wall panels. Braced wall panels shall be distributed in accordance with the following requirements as shown in Figure R602.12.6.

1. The edge of a braced wall panel shall be no more than 12 feet (3658 mm) from any building corner or rectangle corner.
2. The distance between adjacent edges of braced wall panels shall be no more than 20 feet (6096 mm).
3. Segments of exterior walls greater than 8 feet (2438 mm) in length shall have a minimum of one braced wall panel.
4. Segments of exterior wall 8 feet (2438 mm) or less in length shall be permitted to have no braced wall panels.





R602.12.4 Required length of bracing. The required length of bracing for each side of a circumscribed rectangle shall be determined using Table R602.12.4. Where multiple rectangles share a common side or sides, the required length of bracing shall equal the sum of the required lengths from all shared rectangle sides.

Wind Speed	Eave-to-Ridge Height (feet)	Number of Floor Levels Above ^{e,f}	Required Length of Bracing on Front/Rear Side (feet)								Required Length of Bracing on Left/Right Side (feet)							
			Length of Left/Right Side (feet)								Length of Front/Rear Side (feet)							
			10	20	30	40	50	60	70	80	10	20	30	40	50	60	70	80
115	10	0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0
		1 ^d	3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6	3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6
		2 ^d	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4
	15	0	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7
		1 ^d	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2
		2 ^d	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7
	20	0	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6
		1 ^d	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5
		2 ^d	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5
130	10	0	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6
		1 ^d	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0
		2 ^d	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4
	15	0	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1
		1 ^d	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2
		2 ^d	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5
	20	0	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6
		1 ^d	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3
		2 ^d	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3

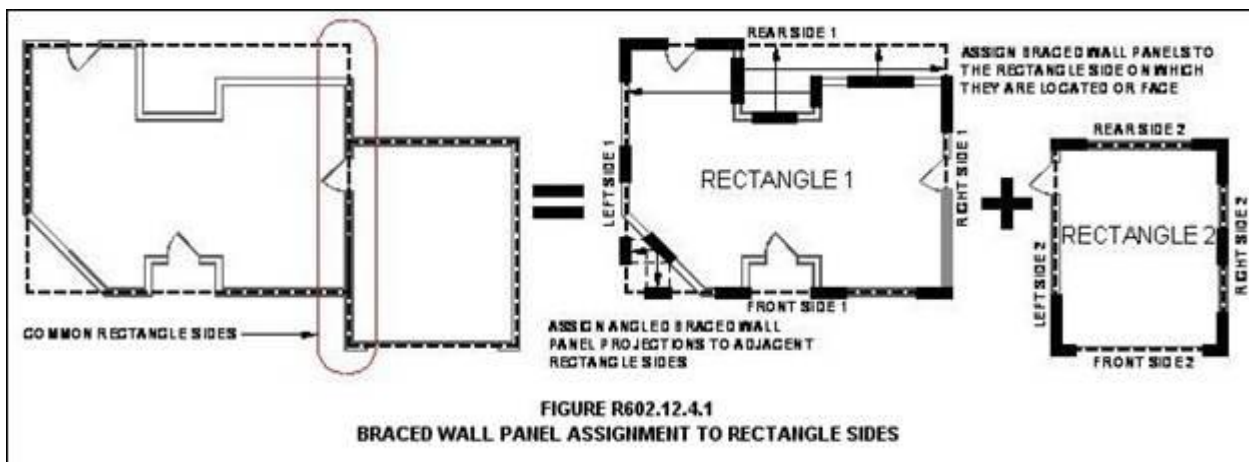
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For SI: 1 ft = 304.8 mm.

- a. Interpolation shall be permitted; extrapolation shall be prohibited.
- b. For Exposure Category C, multiply the required length of bracing by a factor of 1.20 for a one-story building, 1.30 for a two-story building, and 1.40 for a three-story building.
- c. For wall height adjustments multiply the required length of bracing by the following factors: 0.90 for 8 feet (2438 mm), 0.95 for 9 feet (2743 mm), 1.0 for 10 feet (3048 mm), 1.05 for 11 feet (3353 mm), and 1.10 for 12 feet (3658 mm).
- d. Where braced wall panels supporting stories above have been sheathed in wood structural panels with edge fasteners spaced at 4 inches (102 mm) on center, multiply the required length of bracing by 0.83.
- e. A floor level, habitable or otherwise, contained wholly within the roof rafters or trusses shall not be considered a floor level for purposes of determining the required length of bracing.
- f. A rectangle side with differing number of floor levels above shall use the greatest number when determining the required length of bracing.

R602.12.4.1 Braced wall panel assignment to rectangle sides. Braced wall panels shall be assigned to the applicable rectangle side and contribute to its required length of bracing. Panels shall be assigned as specified below and as shown in Figure R602.12.4.1.

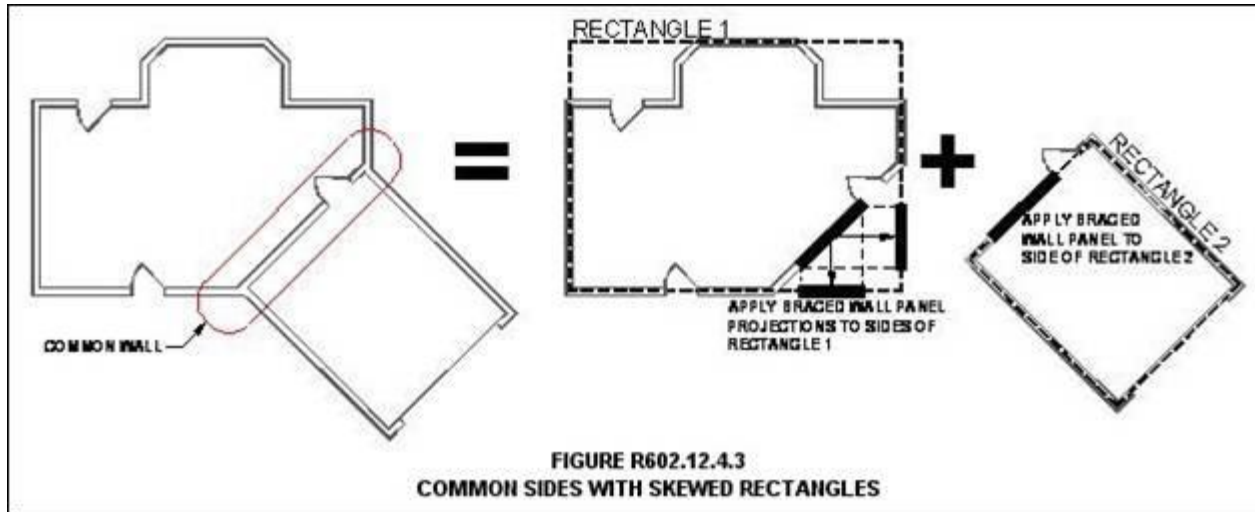
1. Exterior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face.
2. Interior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face up to 4 feet (1220 mm) away. Interior braced wall panels more than 4 feet (1220 mm) away from a parallel rectangle side shall not contribute.
3. The projections of angled braced wall panels shall be assigned to the adjacent rectangle sides.



R602.12.4.2 Contributing length. The cumulative contributing length of braced wall panels assigned to a rectangle side shall be greater than or equal to the required length of bracing as determined in Section R602.12.4. The contributing length of a braced wall panel shall be as specified below. When applying contributing length to angled braced wall panels, apply the requirements below to each projection:

1. Exterior braced wall panels shall contribute their actual length.
2. Interior braced wall panels shall contribute one-half of their actual length.
3. The contributing length of Methods ABW, PFH, PFG, and CS-PF shall be in accordance with Table R602.10.5.

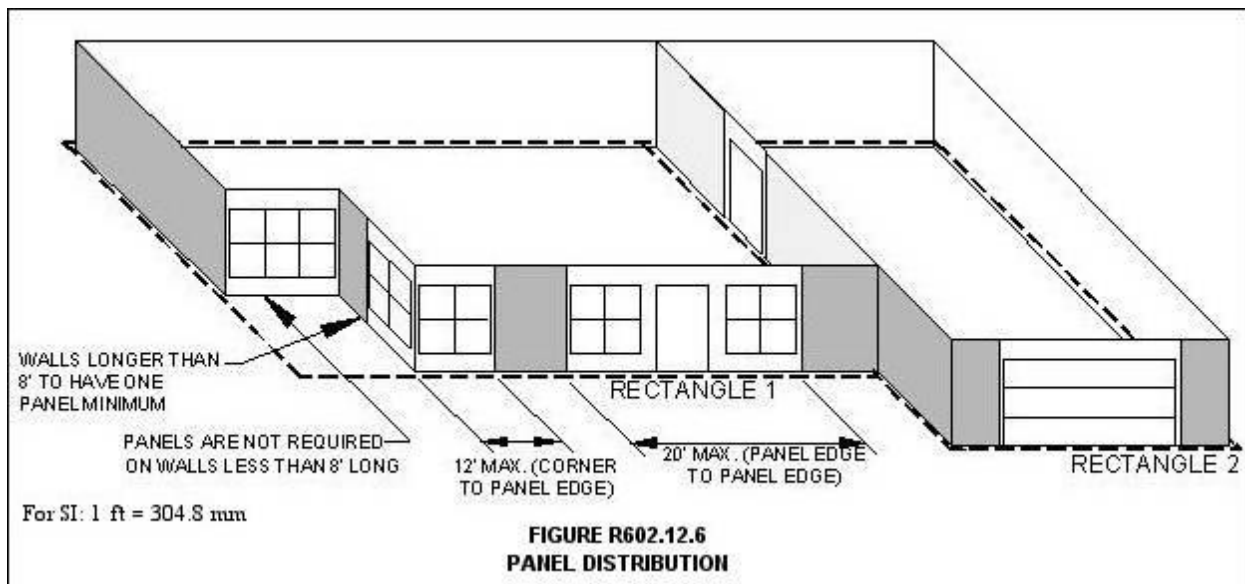
R602.12.4.3 Common sides with skewed rectangles. Braced wall panels located on a common wall where skewed rectangles intersect, as shown in Figure R602.12.4.3, shall be permitted to be assigned to the parallel rectangle side, and their projections shall be permitted to be assigned to the adjacent skewed rectangle sides.



R602.12.5 Cripple walls and framed walls of walk-out basements. For rectangle sides with cripple walls having a maximum height of 48 inches (1220 mm), the required length of bracing shall be as determined in Section R602.12.4. For rectangle sides with cripple walls having a height greater than 48 inches (1220 mm) at any location or framed walls of a walk-out basement, the required length of bracing shall be determined using Table R602.12.4. Braced wall panels within cripple walls and walls of walk-out basements shall comply with Item 4 of Section R602.12.2.

R602.12.6 Distribution of braced wall panels. Braced wall panels shall be distributed in accordance with the following requirements as shown in Figure R602.12.6.

1. The edge of a braced wall panel shall be no more than 12 feet (3658 mm) from any building corner or rectangle corner.
2. The distance between adjacent edges of braced wall panels shall be no more than 20 feet (6096 mm).
3. Segments of exterior walls greater than 8 feet (2438 mm) in length shall have a minimum of one braced wall panel.
4. Segments of exterior wall 8 feet (2438 mm) or less in length shall be permitted to have no braced wall panels.



R602.12.6.1 Panels adjacent to balloon framed walls. Braced wall panels shall be placed on each side of each story adjacent to balloon framed walls designed in accordance with Section R602.3 with a maximum height of two stories.

R602.12.7 Braced wall panel connection. Braced wall panels shall be connected to other structural elements in accordance with Section R602.10.8.

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R602.12.8 Braced wall panel support. Braced wall panels shall be supported in accordance with Section R602.10.9.

54. Change Sections R802.2 and R802.3 to read:

~~R802.2 Design and construction. The roof and ceiling assembly shall provide continuous ties across the structure to prevent roof thrust from being applied to the supporting walls. The assembly shall be designed and constructed in accordance with the provisions of this chapter and Figures R606.11(1), R606.11(2) and R606.11(3) or in accordance with AWC-NDS.~~

~~R802.3 Ridge. A ridge board used to connect opposing rafters shall be not less than 1 inch (25 mm) nominal thickness and not less in depth than the cut end of the rafter. Where ceiling joist or rafter ties do not provide a continuous ties across the structure, a ridge beam shall be provided and supported on each end by a wall or girder.~~

55. Delete Sections R802.3.1, R802.3.2 and R802.3.3.

56. Change Section R802.4 and add Section R802.4.1 to read:

~~R802.4 Rafters. Rafters shall be in accordance with this section.~~

~~R802.4.1 Rafter size. Rafters shall be sized based on the rafter spans in Tables R802.4.1(1) through R802.4.1(8). Rafter spans shall be measured along the horizontal projection of the rafter. For other grades and species and for other loading conditions, refer to the AWC-STJR.~~

57. Change the titles of Tables R802.4(1) and R802.4(2) to Tables R802.5.1(1) and R802.5.1(2), respectively, and change the titles of Tables R802.5.1(1) through R802.5.1(8) to Tables R802.4.1(1) through R802.4.1(8), respectively.

58. Add Sections R802.4.2 through R802.4.5 to read:

~~R802.4.2 Framing details. Rafters shall be framed not more than 1 1/2 inches (38 mm) offset from each other to a ridge board or directly opposite from each other with a collar tie, gusset plate or ridge strap in accordance with Table R602.3(1). Rafters shall be nailed to the top wall plates in accordance with Table R602.3(1) unless the roof assembly is required to comply with the uplift requirements of Section R802.11.~~

~~R802.4.3 Hips and valleys. Hip and valley rafters shall be not less than 2 inches (51 mm) nominal in thickness and not less in depth than the cut end of the rafter. Hip and valley rafters shall be supported at the ridge by a brace to a bearing partition or be designed to carry and distribute the specific load at that point.~~

~~R802.4.4 Rafter supports. Where the roof pitch is less than 3:12 (25% slope), structural members that support rafters, such as ridges, hips and valleys, shall be designed~~

~~as beams, and bearing shall be provided for rafters in accordance with Section R802.6.~~

~~R802.4.5 Purlins. Installation of purlins to reduce the span of rafters is permitted as shown in Figure R802.4.5. Purlins shall be sized not less than the required size of the rafters that they support. Purlins shall be continuous and shall be supported by 2 inch by 4 inch (51 mm by 102 mm) braces installed to bearing walls at a slope not less than 45 degrees (0.79 rad) from the horizontal. The braces shall be spaced not more than 4 feet (1219 mm) on center and the unbraced length of braces shall not exceed 8 feet (2438 mm).~~

59. Add Figure R802.4.5 to read:

EDITOR'S NOTE: Figure R802.4.5, Brace Rafter Construction, is deleted; therefore the figure is not set out.
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60. Add Section R802.4.6 to read:

~~R802.4.6 Collar ties. Where collar ties are used to connect opposing rafters, they shall be located in the upper third of the attic space and fastened in accordance with Table R602.3(1). Collar ties shall be not less than 1 inch by 4 inches (25 mm by 102 mm) nominal, spaced not more than 4 feet (1219 mm) on center. Ridge straps in accordance with Table R602.3(1) shall be permitted to replace collar ties.~~

61. Change Sections R802.5 and R802.5.1 to read:

~~R802.5 Ceiling joists. Ceiling joists shall be continuous across the structure or securely joined where they meet over interior partitions in accordance with Table R802.5.2.~~

~~R802.5.1 Ceiling joist size. Ceiling joists shall be sized based on the joist spans in Tables R802.4(1) and R802.4(2). For other grades and species and for other loading conditions, refer to the AWC-STJR.~~

62. Delete Figure R802.5.1 and change the title of Table R802.5.1(9) to Table R802.5.2.

63. Add Section R802.5.2 to read:

~~R802.5.2 Ceiling joist and rafter connections. Where ceiling joists run parallel to rafters, they shall be connected to rafters at the top wall plate in accordance with Table R802.5.2. Where ceiling joists are not connected to the rafters at the top wall plate, they shall be installed in the bottom third of the rafter height in accordance with Figure R802.4.5 and Table R802.5.2. Where the ceiling joists are installed above the bottom third of the rafter height, the ridge shall be designed as a beam. Where ceiling joists do not run parallel to rafters, the ceiling joists shall be connected to top plates in accordance with Table R602.3(1). Each rafter shall be tied across the structure with a rafter tie or a 2 inch by 4 inch (51 mm x 102 mm) kicker connected to the ceiling~~

diaphragm with nails equivalent in capacity to Table R802.5.2.

64. Add Sections R802.5.2.1 through R802.5.2.3 to read:

~~R802.5.2.1 Ceiling joists lapped. Ends of ceiling joists shall be lapped a minimum of 3 inches (76 mm) or butted over bearing partitions or beams and toenailed to the bearing member. Where ceiling joists are used to provide resistance to rafter thrust, lapped joists shall be nailed together in accordance with Table R802.5.2, and butted joists shall be tied together in a manner to resist such thrust. Joists that do not resist thrust shall be permitted to be nailed in accordance with Table R602.3(1). Wood structural panel roof sheathing, in accordance with Table R503.2.1.1(1), shall not cantilever more than 9 inches (229 mm) beyond the gable endwall unless supported by gable overhang framing.~~

~~R802.5.2.2 Rafter ties. Wood rafter ties shall be not less than 2 inches by 4 inches (51 mm by 102 mm) installed in accordance with Table R802.5.2 at each rafter. Other approved rafter tie methods shall be permitted.~~

~~R802.5.2.3 Blocking. Blocking shall be not less than utility grade lumber.~~

65. ~~57.~~ Delete Section R905.2.8.5.

66. ~~58.~~ Change Section R1001.8 to read:

R1001.8 Smoke chamber. Smoke chamber walls shall be constructed of solid masonry units, hollow masonry units grouted solid, stone, or concrete. The total minimum thickness of front, back, and side walls shall be 8 inches (203 mm) of solid masonry. When the inside surface of the smoke chamber is formed by corbelled masonry, the inside surface shall be parged smooth. When a lining of firebrick at least 2 inches (51 mm) thick, or a lining of vitrified clay at least 5/8 inch (16 mm) thick, is provided, the total minimum thickness of front, back, and side walls shall be 6 inches (152 mm) of solid masonry, including the lining. Firebrick shall conform to ASTM C 1261 and shall be laid with medium duty refractory mortar conforming to ASTM C 199. Vitrified clay linings shall conform to ASTM C 315.

67. ~~59.~~ Change Section N1101.13 (R401.2) to read:

N1101.13 (R401.2) Compliance. Projects shall comply with all provisions of Chapter 11 labeled "Mandatory" and one of the following:

1. Sections N1101.14 through N1104.
2. Section N1105.
3. Section N1106.
4. The most recent version of REScheck, keyed to the ~~2015~~ 2018 IECC.

Note: See REScheck compliance guidance issued by DHCD, available at the Department's website.

68. ~~Delete 60. Change Section N1101.14 (R401.3):~~ to read:

N1101.14 (R401.3) Certificate mandatory. A permanent certificate shall be completed by the builder or other approved party and posted on a wall in the space where the furnace is located, a utility room or an approved location inside the building. Where located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall indicate the predominant R-values of insulation installed in or on ceilings, roofs, walls, or foundation components, such as slabs, basement walls, crawl space walls, and floors and ducts outside conditioned spaces; U-factors of fenestration and the solar heat gain coefficient (SHGC) of fenestration; and the results from any required duct system and building envelope air leakage testing performed on the building. Where there is more than one value for each component, the certificate shall indicate the value covering the largest area. The certificate shall indicate the types and efficiencies of heating, cooling, and service water heating equipment. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall indicate "gas-fired unvented room heater," "electric furnace," or "baseboard electric heater," as appropriate. An efficiency shall not be indicated for gasfired unvented room heaters, electric furnaces, and electric baseboard heaters.

69. ~~61.~~ Change the ceiling R-value and wood frame wall R-value categories for climate zone "4 except Marine" in Table N1102.1.2 (R402.1.2) to read:

Ceiling R-Value	Wood Frame Wall R-Value
38	15 or 13 + 1 ^h

70. ~~62.~~ Change the ceiling U-factor and frame wall U-factor categories for climate zone "4 except Marine" in Table N1102.1.4 (R402.1.4) to read:

Ceiling U-Factor	Frame Wall U-Factor
0.030	0.079

71. ~~63.~~ Change Section N1102.2.4 (R402.2.4) to read:

N1102.2.4 (R402.2.4) Access hatches and doors. Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated in accordance with the following values:

1. Hinged vertical doors shall have a minimum overall R-5 insulation value;

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2. Hatches and scuttle hole covers shall be insulated to a level equivalent to the insulation on the surrounding surfaces; and

3. Pull down stairs shall have a minimum of 75% of the panel area having R-5 rigid insulation.

Access shall be provided to all equipment that prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer is required to be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened, and to provide a permanent means of maintaining the installed R-value of the loose fill insulation.

~~72.~~ 64. Change Sections N1102.4 (R402.4) and N1102.4.1.1 (R402.4.1.1) to read:

N1102.4 (R402.4) Air leakage. The building thermal envelope shall be constructed to limit air leakage in accordance with the requirements of Sections N1102.4.1 through N1102.4.4.

N1102.4.1.1 (R402.4.1.1) Installation (Mandatory). The components of the building thermal envelope as listed in Table N1102.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table N1102.4.1.1, as applicable to the method of construction. Where required by the code official, an approved third party shall inspect all components and verify compliance.

~~73.~~ 65. Change the title of the "Insulation Installation Criteria" category of Table N1102.4.1.1 (R402.4.1.1); change the "Shower/tub on exterior wall" category of Table N1102.4.1.1 (R402.4.1.1), and add footnotes "b" and "c" to Table N1102.4.1.1 (R402.4.1.1) to read:

Component	Air Barrier Criteria	Insulation Installation Criteria ^b
Shower/tub on exterior wall ^c	The air barrier installed at exterior walls adjacent to showers and tubs shall be installed on the interior side and separate the exterior walls from the showers and tubs.	Exterior walls adjacent to showers and tubs shall be insulated.
<p>b. Structural integrity of headers shall be in accordance with the applicable building code.</p> <p>c. Air barriers used behind showers and tubs on exterior walls shall be of a permeable material that does not cause the entrapment of moisture in the stud cavity.</p>		

~~74.~~ 66. Change Section N1102.4.1.2 (R402.4.1.2) and add Sections ~~N1102.4.1.2.1 (R402.4.1.2.1), N1102.4.1.2.2 (R402.4.1.2.2), and N1102.4.1.3 (R402.4.1.3)~~ to read:

~~N1102.4.1.2 (R402.4.1.2) Air sealing. Building envelope air tightness shall be demonstrated to comply with either Section N1102.4.1.2.1 or N1102.4.1.2.2.~~

~~N1102.4.1.2.1 (R402.4.1.2.1) Testing option. The building or dwelling unit shall be tested for and verified as having an air leakage rate not exceeding five air changes per hour in Climate Zone 4. Testing shall be conducted in accordance with a blower door RESNET/ICC 380, ASTM E 779, or ASTM E 1827 and reported at a pressure of 0.2 inches w.g. (50 Pa). Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official. Testing shall be conducted by a Virginia licensed general contractor, a Virginia licensed HVAC contractor, a Virginia licensed home inspector, a Virginia registered design professional, a certified BPI Envelope Professional, a certified HERS rater, or a certified duct and envelope tightness rater. The party conducting the test shall have been trained on the equipment used to perform the test.~~ Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

Note: Should additional sealing be required as a result of the test, consideration may be given to the issuance of temporary certificate of occupancy in accordance with Section 116.1.1.

During testing:

1. Exterior windows and doors and fireplace and stove doors shall be closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;
2. Dampers, including exhaust, intake, makeup air, backdraft, and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;
5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and
6. Supply and return registers, if installed at the time of the test, shall be fully open.

~~N1102.4.1.2.2 (R402.4.1.2.2) Visual inspection option. Building envelope tightness shall be considered acceptable when the items listed in Table N1102.4.1.1, applicable to the method of construction, are field~~

~~verified. Where required by the building official, an approved party, independent from the installer, shall inspect the air barrier. When this option is chosen, whole house mechanical ventilation shall be provided in accordance with Section M1507.3.~~

~~N1102.4.1.3 (R402.4.1.3) Leakage rate (Prescriptive). The building or dwelling unit shall have an air leakage rate less than 5 changes per hour as verified in accordance with Section N1102.4.1.2.~~

~~75. 67.~~ Change Section N1103.3.3 (R403.3.3) to read:

N1103.3.3 (R403.3.3) Duct testing (Mandatory). Ducts shall be pressure tested to determine air leakage by one of the following methods:

1. Rough-in test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure if installed at the time of the test. All registers shall be taped or otherwise sealed during the test.
2. Postconstruction test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test.

Exception: A duct air leakage test shall not be required where the ducts and air handlers are located entirely within the building thermal envelope.

A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. The licensed mechanical contractor installing the mechanical system shall be permitted to perform the duct testing. The contractor shall have been trained on the equipment used to perform the test.

~~68. Delete Section N1103.3.5 (R403.3.5).~~

~~76. 69.~~ Change Section N1103.7 (R403.7) to read:

N1103.7 (R403.7) Equipment and appliance sizing. Heating and cooling equipment and appliances shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.

Exception: Heating and cooling equipment and appliance sizing shall not be limited to the capacities determined in accordance with Manual S or other approved sizing methodologies where any of the following conditions apply:

1. The specified equipment or appliance utilizes multi-stage technology or variable refrigerant flow technology and the loads calculated in accordance with the approved heating and cooling methodology fall within the range of

the manufacturer's published capacities for that equipment or appliance.

2. The specified equipment or appliance manufacturer's published capacities cannot satisfy both the total and sensible heat gains calculated in accordance with the approved heating and cooling methodology and the next larger standard size unit is specified.

3. The specified equipment or appliance is the lowest capacity unit available from the specified manufacturer.

~~77. 70.~~ Change footnote for Table N1106.4 (R406.4) to read:

Table N1106.4 (R406.4)	
Maximum Energy Rating Index*	
Climate Zone	Energy Rating Index
1	52
2	52
3	54
4	62
5	55
6	54
7	53
8	53
a. When onsite renewable energy is included for compliance using the ERI analysis per Section N1106.4 (R406.4), the building shall meet the mandatory requirements of Section N1106.2 (R406.2) and the building thermal envelope shall be greater than or equal to levels of energy efficiency and solar heat gain coefficient in Table N1102.1.2 (R402.1.2), with a ceiling R-value of 49 and a wood frame wall R-value of 20 or 13+5, or Table N1102.1.4 (R402.1.4), with a ceiling U-factor of 0.026 and a frame wall U-factor of 0.060.	

~~78. 71.~~ Delete Section N1109.1.1.1 (R503.1.1.1).

~~79. 72.~~ Change Section M1401.3 to read:

M1401.3 Equipment and appliance sizing. Heating and cooling equipment and appliances shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.

Exception: Heating and cooling equipment and appliance sizing shall not be limited to the capacities determined in accordance with Manual S or other approved sizing

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methodologies where any of the following conditions apply:

1. The specified equipment or appliance utilizes multi-stage technology or variable refrigerant flow technology and the loads calculated in accordance with the approved heating and cooling methodology fall within the range of the manufacturer's published capacities for that equipment or appliance.
2. The specified equipment or appliance manufacturer's published capacities cannot satisfy both the total and sensible heat gains calculated in accordance with the approved heating and cooling methodology, and the next larger standard size unit is specified.
3. The specified equipment or appliance is the lowest capacity unit available from the specified manufacturer.

~~80-~~ 73. Add Section M1501.2 to read:

M1501.2 Transfer air. Air transferred from occupiable spaces other than kitchens, baths, and toilet rooms shall not be prohibited from serving as makeup air for exhaust systems. Transfer openings between spaces shall be of the same cross-sectional area as the free area of the makeup air openings. Where louvers and grilles are installed, the required size of openings shall be based on the net free area of each opening. Where the design and free area of louvers and grilles are not known, it shall be assumed that wood louvers will have 25% free area and metal louvers and grilles will have 75% free area.

~~81-~~ 74. Change Section M1502.4.2 to read:

M1502.4.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and shall be secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

~~82-~~ 75. Change Section ~~M1503.4~~ M1503.6 to read:

~~M1503.4~~ M1503.6 Makeup air required. Exhaust hood systems capable of exhausting more than 400 cubic feet per minute (0.19 m³/s) shall be provided with makeup air at a rate approximately equal to the exhaust air rate in excess of 400 cubic feet per minute (0.19 m³/s). Such makeup air systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

Exception: Intentional openings for makeup air are not required for kitchen exhaust systems capable of exhausting not greater than 600 cubic feet per minute

(0.28 m³/s) provided that one of the following conditions is met:

1. Where the floor area within the air barrier of a dwelling unit is at least ~~4500~~ 1,500 square feet (139.35 m²), and where natural draft or mechanical draft space-heating or water-heating appliances are not located within the air barrier.
2. Where the floor area within the air barrier of a dwelling unit is at least ~~3000~~ 3,000 square feet (278.71 m²), and where natural draft space-heating or water-heating appliances are not located within the air barrier.

~~83-~~ 76. Add Section M1801.1.1 to read:

M1801.1.1 Equipment changes. Upon the replacement or new installation of any fuel-burning appliances or equipment in existing buildings, an inspection or inspections shall be conducted to ensure that the connected vent or chimney systems comply with the following:

1. Vent or chimney systems are sized in accordance with this code.
2. Vent or chimney systems are clean, free of any obstruction or blockages, defects or deterioration and are in operable condition.

Where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the requirements of Items 1 and 2 of this section are met.

~~84-~~ 77. Change Sections G2411.1 and ~~G2411.1.1~~ G2411.2 to read:

G2411.1 Pipe and tubing. Each above-group portion of a gas piping system that is likely to become energized shall be electrically continuous and bonded to an effective ground-fault current path. Gas piping shall be considered to be bonded where it is connected to appliances that are connected to the equipment grounding conductor of the circuit supplying that appliance. Corrugated stainless steel tubing (CSST) piping systems listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall comply with this section. Where any CSST segments of a piping system are not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26, Section ~~G2411.1.1~~ G2411.2 shall apply.

~~G2411.1.1~~ G2411.2 CSST without arc resistant jacket or coating system. CSST gas piping systems and piping systems containing one or more segments of CSST not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall be bonded to the electrical service grounding electrode system or, where provided, the lightning protection electrode system

and shall comply with Sections ~~G2411.1.1.1~~ G2411.2.1 through ~~G2411.1.1.5~~ G2411.2.5.

~~85.~~ 78. Add Section G2425.1.1 to read:

G2425.1.1 Equipment changes. Upon the replacement or new installation of any fuel-burning appliances or equipment in existing buildings, an inspection or inspections shall be conducted to ensure that the connected vent or chimney systems comply with the following:

1. Vent or chimney systems are sized in accordance with this code.
2. Vent or chimney systems are clean, free of any obstruction or blockages, defects, or deterioration and are in operable condition.

Where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the requirements of Items 1 and 2 of this section are met.

~~86.~~ 79. Change Section G2439.7.2 to read:

G2439.7.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

~~87.~~ 80. Change Section P2601.2 to read:

P2601.2 Connections. Plumbing fixtures, drains and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent indirect waste systems.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an approved nonpotable gray water system in accordance with the applicable provisions of Sections P2910, P2911, and P2912.

~~88.~~ 81. Change Section P2602.1 to read:

P2602.1 General. The water and drainage system of any building or premises where plumbing fixtures are installed shall be connected to a public or private water supply and a public or private sewer system. As provided for in Section 103.5 of Part I of the Virginia Uniform Statewide Building Code (13VAC5-63) for functional

design, water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health and the Virginia Department of Environmental Quality.

Note: See also the Memorandums of Agreement in the "Related Laws Package," which is available from the Virginia Department of Housing and Community Development.

~~89.~~ 82. Add Section P2602.3 to read:

P2602.3 Tracer wire. Nonmetallic water service piping that connects to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the water service piping and within 12 inches (305 mm) of the pipe and shall be installed to within five feet (1524 mm) of the building wall to the point where the building water service pipe intersects with the public water supply. At a minimum, one end of the wire shall terminate above grade to provide access to the wire in a location that is resistant to physical damage, such as with a meter vault or at the building wall.

~~90.~~ 83. Add Section P2901.1.1 to read:

P2901.1.1 Nonpotable fixtures and outlets. Nonpotable water shall be permitted to serve nonpotable type fixtures and outlets in accordance with the applicable provisions of Sections P2910, P2911, and P2912.

~~91.~~ 84. Change Section P2903.5 to read:

P2903.5 Water hammer. The flow velocity of the water distribution system shall be controlled to reduce the possibility of water hammer. A water-hammer arrestor shall be installed where quick-closing valves are utilized, unless otherwise approved. Water hammer arrestors shall be installed in accordance with manufacturer's specifications. Water hammer arrestors shall conform to ASSE 1010.

~~85.~~ Change Section P2906.2.1 to read:

P2906.2.1 Lead content of drinking water pipe and fittings. Pipe, pipe fittings, joints, valves, faucets, and fixture fittings utilized to supply water for drinking or cooking purposes shall comply with NSF 372.

~~92.~~ 86. Change Sections P2910.1 through P2910.14, including subsections, to read:

P2910.1 Scope. The provisions of this section shall govern the materials, design, construction, and installation of nonpotable water systems subject to this code.

P2910.1.1 Design of nonpotable water systems. All portions of nonpotable water systems subject to this code

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shall be constructed using the same standards and requirements for the potable water systems or drainage systems as provided for in this code unless otherwise specified in this section or Section P2911 or P2912, as applicable.

P2910.2 Makeup water. Makeup water shall be provided for all nonpotable water supply systems. The makeup water system shall be designed and installed to provide supply of water in the amounts and at the pressures specified in this code. The makeup water supply shall be potable and be protected against backflow in accordance with the applicable requirements of Section P2902.

P2910.2.1 Makeup water sources. Nonpotable water shall be permitted to serve as makeup water for gray water and rainwater systems.

P2910.2.2 Makeup water supply valve. A full-open valve shall be provided on the makeup water supply line.

P2910.2.3 Control valve alarm. Makeup water systems shall be fitted with a warning mechanism that alerts the user to a failure of the inlet control valve to close correctly. The alarm shall activate before the water within the storage tank begins to discharge into the overflow system.

P2910.3 Sizing. Nonpotable water distribution systems shall be designed and sized for peak demand in accordance with approved engineering practice methods that comply with the applicable provisions of this chapter.

P2910.4 Signage required. All nonpotable water outlets, other than water closets and urinals, such as hose connections, open ended pipes, and faucets shall be identified at the point of use for each outlet with signage that reads as follows: "Nonpotable water is utilized for (insert application name). Caution: nonpotable water. DO NOT DRINK." The words shall be legibly and indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material or shall be indelibly printed on the fixture. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and in colors in contrast to the background on which they are applied. The pictograph shown in Figure P2910.4 shall appear on the signage required by this section.



P2910.5 Potable water supply system connections. Where a potable water supply system is connected to a nonpotable water system, the potable water supply shall be protected against backflow in accordance with the applicable provisions of Section P2902.

P2910.6 Nonpotable water system connections. Where a nonpotable water system is connected and supplies water to another nonpotable water system, the nonpotable water system that supplies water shall be protected against backflow in accordance with the applicable provisions of Section P2902.

P2910.7 Approved components and materials. Piping, plumbing components, and materials used in the nonpotable water drainage and distribution systems shall be approved for the intended application and compatible with the water and any disinfection or treatment systems used.

P2910.8 Insect and vermin control. Nonpotable water systems shall be protected to prevent the entrance of insects and vermin into storage and piping systems. Screen materials shall be compatible with system material and shall not promote corrosion of system components.

P2910.9 Freeze protection. Nonpotable water systems shall be protected from freezing in accordance with the applicable provisions of Chapter 26.

P2910.10 Nonpotable water storage tanks. Nonpotable water storage tanks shall be approved for the intended application and comply with Sections P2910.10.1 through P2910.10.12.

P2910.10.1 Sizing. The holding capacity of storage tanks shall be sized for the intended use.

P2910.10.2 Inlets. Storage tank inlets shall be designed to introduce water into the tank and avoid agitating the contents of the storage tank. The water supply to storage tanks shall be controlled by fill valves or other automatic supply valves designed to stop the flow of incoming water before the tank contents reach the overflow pipes.

P2910.10.3 Outlets. Outlets shall be located at least 4 inches (102 mm) above the bottom of the storage tank and shall not skim water from the surface.

P2910.10.4 Materials and location. Storage tanks shall be constructed of material compatible with treatment systems used to treat water. Above grade storage vessels shall be constructed using opaque, UV-resistant materials such as tinted plastic, lined metal, concrete, or wood or painted to prevent algae growth. Above grade storage tanks shall be protected from direct sunlight unless their design specifically incorporates the use of the sunlight heat transfer. Wooden storage tanks shall be provided with a flexible liner. Storage tanks and their manholes shall not be located directly under soil or waste piping or sources of contamination.

P2910.10.5 Foundation and supports. Storage tanks shall be supported on a firm base capable of withstanding the storage tank's weight when filled to capacity. Storage tanks shall be supported in accordance with the applicable provisions of the IBC.

P2910.10.5.1 Ballast. Where the soil can become saturated, an underground storage tank shall be ballasted, or otherwise secured, to prevent the effects of buoyancy. The combined weight of the tank and hold down ballast shall meet or exceed the buoyancy force of the tank. Where the installation requires a foundation, the foundation shall be flat and shall be designed to support the storage tank weight when full, consistent with the bearing capability of adjacent soil.

P2910.10.5.2 Structural support. Where installed below grade, storage tank installations shall be designed to withstand earth and surface structural loads without damage.

P2910.10.6 Overflow. The storage tank shall be equipped with an overflow pipe having a diameter not less than that shown in Table P2910.10.6. The overflow outlet shall discharge at a point not less than 6 inches (152 mm) above the roof or roof drain, floor or floor drain, or over an open water-supplied fixture. The overflow outlet shall terminate through a check valve. Overflow pipes shall not be directed on walkways. The overflow drain shall not be equipped with a shutoff valve. A minimum of one cleanout shall be provided on each overflow pipe in accordance with the applicable provisions of Section P3005.2.

Table P2910.10.6 Sizes for Overflow Pipes for Water Supply Tanks	
Maximum Capacity of Water Supply Line to Tank (gpm)	Diameter of Overflow Pipe (inches)
0 - 50	2

50 - 150	2-1/2
150 - 200	3
200 - 400	4
400 - 700	5
700 - 1,000	6
Over 1,000	8
For SI: 1 inch = 25.4 mm, 1 gallon per minute = 3.785 L/m.	

P2910.10.7 Access. A minimum of one access opening shall be provided to allow inspection and cleaning of the tank interior. Access openings shall have an approved locking device or other approved method of securing access. Below grade storage tanks, located outside of the building, shall be provided with either a manhole not less than 24 inches (610 mm) square or a manhole with an inside diameter not less than 24 inches (610 mm). The design and installation of access openings shall prohibit surface water from entering the tank. Each manhole cover shall have an approved locking device or other approved method of securing access.

Exception: Storage tanks under 800 gallons (3028 L) in volume installed below grade shall not be required to be equipped with a manhole, but shall have an access opening not less than 8 inches (203 mm) in diameter to allow inspection and cleaning of the tank interior.

P2910.10.8 Venting. Storage tanks shall be vented. Vents shall not be connected to the sanitary drainage system. Vents shall be at least equal in size to the internal diameter of the drainage inlet pipe or pipes connected to the tank. Where installed at grade, vents shall be protected from contamination by means of a U-bend installed with the opening directed downward. Vent outlets shall extend a minimum of 12 inches (304.8 mm) above grade, or as necessary to prevent surface water from entering the storage tank. Vent openings shall be protected against the entrance of vermin and insects. Vents serving gray water tanks shall terminate in accordance with the applicable provisions of Sections P3103 and P2910.8.

P2910.10.9 Drain. Where drains are provided, they shall be located at the lowest point of the storage tank. The tank drain pipe shall discharge as required for overflow pipes and shall not be smaller in size than specified in Table P2910.10.6. A minimum of one cleanout shall be provided on each drain pipe in accordance with Section P3005.2.

P2910.10.10 Labeling and signage. Each nonpotable water storage tank shall be labeled with its rated capacity and the location of the upstream bypass valve.

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Underground and otherwise concealed storage tanks shall be labeled at all access points. The label shall read: "CAUTION: NONPOTABLE WATER - DO NOT DRINK." Where an opening is provided that could allow the entry of personnel, the opening shall be marked with the words: "DANGER - CONFINED SPACE." Markings shall be indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material mounted on the tank or shall be indelibly printed on the tank. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and shall be of a color in contrast with the background on which they are applied.

P2910.10.11 Storage tank tests. Storage tanks shall be tested in accordance with the following:

1. Storage tanks shall be filled with water to the overflow line prior to and during inspection. All seams and joints shall be left exposed and the tank shall remain water tight without leakage for a period of 24 hours.
2. After 24 hours, supplemental water shall be introduced for a period of 15 minutes to verify proper drainage of the overflow system and verify that there are no leaks.
3. Following a successful test of the overflow system, the water level in the tank shall be reduced to a level that is at 2 inches (50.8 mm) below the makeup water offset point. The tank drain shall be observed for proper operation. The makeup water system shall be observed for proper operation, and successful automatic shutoff of the system at the refill threshold shall be verified. Water shall not be drained from the overflow at any time during the refill test.
4. Air tests shall be permitted in lieu of water testing as recommended by the tank manufacturer or the tank standard.

P2910.10.12 Structural strength. Storage tanks shall meet the applicable structural strength requirements of the IBC.

P2910.11 Trenching requirements for nonpotable water system piping. Underground nonpotable water system piping shall be horizontally separated from the building sewer and potable water piping by 5 feet (1524 mm) of undisturbed or compacted earth. Nonpotable water system piping shall not be located in, under, or above sewage systems cesspools, septic tanks, septic tank drainage fields, or seepage pits. Buried nonpotable water system piping shall comply with the requirements of this code for the piping material installed.

Exceptions:

1. The required separation distance shall not apply where the bottom of the nonpotable water pipe within 5 feet (1524 mm) of the sewer is equal to or greater than 12

inches (305 mm) above the top of the highest point of the sewer and the pipe materials conforms to Table P3002.2.

2. The required separation distance shall not apply where the bottom of the potable water service pipe within 5 feet (1524 mm) of the nonpotable water pipe is a minimum of 12 inches (305 mm) above the top of the highest point of the nonpotable water pipe and the pipe materials comply with the requirements of Table P2906.5.

3. Nonpotable water pipe is permitted to be located in the same trench with building sewer piping, provided that such sewer piping is constructed of materials that comply with the requirements of Table P3002.1(2).

4. The required separation distance shall not apply where a nonpotable water pipe crosses a sewer pipe, provided that the pipe is sleeved to at least 5 feet (1524 mm) horizontally from the sewer pipe centerline on both sides of such crossing with pipe materials that comply with Table P3002.1(2).

5. The required separation distance shall not apply where a potable water service pipe crosses a nonpotable water pipe provided that the potable water service pipe is sleeved for a distance of at least 5 feet (1524 mm) horizontally from the centerline of the nonpotable pipe on both sides of such crossing with pipe materials that comply with Table P3002.1(2).

P2910.12 Outdoor outlet access. Silcocks, hose bibs, wall hydrants, yard hydrants, and other outdoor outlets that are supplied by nonpotable water shall be located in a locked vault or shall be operable only by means of a removable key.

P2910.13 Drainage and vent piping and fittings. Nonpotable drainage and vent pipe and fittings shall comply with the applicable material standards and installation requirements in accordance with provisions of Chapter 30.

P2910.13.1 Labeling and marking. Identification of nonpotable drainage and vent piping shall not be required.

P2910.14 Pumping and control system. Mechanical equipment, including pumps, valves, and filters, shall be accessible and removable in order to perform repair, maintenance, and cleaning. The minimum flow rate and flow pressure delivered by the pumping system shall be designed for the intended application in accordance with the applicable provisions of Section P2903.

~~93-~~ 87. Add Sections P2910.15 through P2910.18, including subsections, to read:

P2910.15 Water-pressure reducing valve or regulator. Where the water pressure supplied by the pumping system exceeds 80 psi (552 kPa) static, a pressure-

reducing valve shall be installed to reduce the pressure in the nonpotable water distribution system piping to 80 psi (552 kPa) static or less. Pressure-reducing valves shall be specified and installed in accordance with the applicable provisions of Section P2903.3.1.

P2910.16 Distribution pipe. Distribution piping utilized in nonpotable water stems shall comply with Sections P2910.16.1 through P2910.16.4.

P2910.16.1 Materials, joints, and connections. Distribution piping and fittings shall comply with the applicable material standards and installation requirements in accordance with applicable provisions of Chapter 29.

P2910.16.2 Design. Distribution piping shall be designed and sized in accordance with the applicable provisions of Chapter 29.

P2910.16.3 Labeling and marking. Distribution piping labeling and marking shall comply with Section ~~P2901.1~~ P2901.2.

P2910.16.4 Backflow prevention. Backflow preventers shall be installed in accordance with the applicable provisions of Section P2902.

P2910.17 Tests and inspections. Tests and inspections shall be performed in accordance with Sections P2910.17.1 through P2910.17.5.

P2910.17.1 Drainage and vent pipe test. Drain, waste, and vent piping used for gray water and rainwater nonpotable water systems shall be tested in accordance with the applicable provisions of Section P2503.

P2910.17.2 Storage tank test. Storage tanks shall be tested in accordance with the Section P2910.10.11.

P2910.17.3 Water supply system test. Nonpotable distribution piping shall be tested in accordance with Section P2503.7.

P2910.17.4 Inspection and testing of backflow prevention assemblies. The testing of backflow preventers and backwater valves shall be conducted in accordance with Section P2503.8.

P2910.17.5 Inspection of vermin and insect protection. Inlets and vent terminations shall be visually inspected to verify that each termination is installed in accordance with Section P2910.10.8.

P2910.18 Operation and maintenance manuals. Operations and maintenance materials for nonpotable water systems shall be provided as prescribed by the system component manufacturers and supplied to the owner to be kept in a readily accessible location.

~~94.~~ 88. Change the title of Section P2911 to "Gray Water Nonpotable Water Systems."

~~95.~~ 89. Change Sections P2911.1 through P2911.6, including subsections, to read:

P2911.1 Gray water nonpotable water systems. This code is applicable to the plumbing fixtures, piping or piping systems, storage tanks, drains, appurtenances, and appliances that are part of the distribution system for gray water within buildings and to storage tanks and associated piping that are part of the distribution system for gray water outside of buildings. This code does not regulate equipment used for, or the methods of, processing, filtering, or treating gray water, which may be regulated by the Virginia Department of Health or the Virginia Department of Environmental Quality.

P2911.1.1 Separate systems. Gray water nonpotable water systems, unless approved otherwise under the permit from the Virginia Department of Health, shall be separate from the potable water system of a building with no cross connections between the two systems except as permitted by the Virginia Department of Health.

P2911.2 Water quality. Each application of gray water reuse shall meet the minimum water quality requirements set forth in Sections P2911.2.1 through P2911.2.4 unless otherwise superseded by other state agencies.

P2911.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

P2911.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

P2911.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

P2911.2.4 Filtration required. Gray water utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

P2911.3 Storage tanks. Storage tanks utilized in gray water nonpotable water systems shall comply with Section P2910.10.

P2911.4 Retention time limits. Untreated gray water shall be retained in storage tanks for a maximum of 24 hours.

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P2911.5 Tank location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table P2911.5.1.

Element	Minimum Horizontal Distance from Storage Tank (feet)
Lot line adjoining private lots	5
Sewage systems	5
Septic tanks	5
Water wells	50
Streams and lakes	50
Water service	5
Public water main	10

P2911.6 Valves. Valves shall be supplied on gray water nonpotable water drainage systems in accordance with Sections P2911.6.1 and P2911.6.2.

P2911.6.1 Bypass valve. One three-way diverter valve certified to NSF 50 or other approved device shall be installed on collection piping upstream of each storage tank, or drainfield, as applicable, to divert untreated gray water to the sanitary sewer to allow servicing and inspection of the system. Bypass valves shall be installed downstream of fixture traps and vent connections. Bypass valves shall be labeled to indicate the direction of flow, connection, and storage tank or drainfield connection. Bypass valves shall be provided with access for operation and maintenance. Two shutoff valves shall not be installed to serve as a bypass valve.

P2911.6.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section P3008.

90. Delete Sections P2911.7 through P2911.13, including subsections.

96. 91. Change the title of Section P2912 to "Rainwater Nonpotable Water Systems."

97. 92. Change Sections P2912.1 through P2912.10, including subsections, to read:

P2912.1 General. The provisions of this section shall govern the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. The provisions of CSA B805/ICC 805 shall be permitted as an alternative to the provisions contained in this section for the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. Roof runoff or stormwater runoff collection surfaces shall be limited to roofing materials, public pedestrian accessible roofs, and subsurface collection identified in CSA B805/ICC 805 Table 7.1. Stormwater runoff shall not be collected from any other surfaces.

P2912.2 Water quality. Each application of rainwater reuse shall meet the minimum water quality requirements set forth in Sections P2912.2.1 through P2912.2.4 unless otherwise superseded by other state agencies.

P2912.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

P2912.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

P2912.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

P2912.2.4 Filtration required. Rainwater utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

P2912.3 Collection surface. Rainwater shall be collected only from aboveground impervious roofing surfaces constructed from approved materials. Overflow or discharge piping from appliances or equipment or both, including ~~but not limited to~~ evaporative coolers, water heaters, and solar water heaters shall not discharge onto rainwater collection surfaces.

P2912.4 Collection surface diversion. At a minimum, the first 0.04 inches (1.016 mm) of each rain event of 25

gallons (94.6 L) per ~~4000~~ 1,000 square feet (92.9 m²) shall be diverted from the storage tank by automatic means and not require the operation of manually operated valves or devices. Diverted water shall not drain onto other collection surfaces that are discharging to the rainwater system or to the sanitary sewer. Such water shall be diverted from the storage tank and discharged in an approved location.

P2912.5 Pre-tank filtration. Downspouts, conductors, and leaders shall be connected to a pre-tank filtration device. The filtration device shall not permit materials larger than 0.015 inches (0.4 mm).

P2912.6 Roof gutters and downspouts. Gutters and downspouts shall be constructed of materials that are compatible with the collection surface and the rainwater quality for the desired end use. Joints shall be made watertight.

P2912.6.1 Slope. Roof gutters, leaders, and rainwater collection piping shall slope continuously toward collection inlets. Gutters and downspouts shall have a slope of not less than 1 unit in 96 units along their entire length, and shall not permit the collection or pooling of water at any point.

P2912.6.2 Size. Gutters and downspouts shall be installed and sized in accordance with local rainfall rates.

P2912.6.3 Cleanouts. Cleanouts or other approved openings shall be provided to permit access to all filters, flushes, pipes, and downspouts.

P2912.7 Storage tanks. Storage tanks utilized in rainwater nonpotable water systems shall comply with Section P2910.10.

P2912.8 Location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table P2912.8.1.

Table P2912.8.1 Location of Rainwater Storage Tanks	
Element	Minimum Horizontal Distance from Storage Tank (feet)
Lot line adjoining private lots	5
Sewage systems	5
Septic tanks	5

P2912.9 Valves. Valves shall be installed in collection and conveyance drainage piping of rainwater nonpotable water systems in accordance with Sections P2912.9.1 and P2912.9.2.

P2912.9.1 Influent diversion. A means shall be provided to divert storage tank influent to allow maintenance and repair of the storage tank system.

P2912.9.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section P3008.

P2912.10 Tests and inspections. Tests and inspections shall be performed in accordance with Sections P2912.10.1 and P2912.10.2.

P2912.10.1 Roof gutter inspection and test. Roof gutters shall be inspected to verify that the installation and slope is in accordance with Section P2912.6.1. Gutters shall be tested by pouring a minimum of one gallon of water into the end of the gutter opposite the collection point. The gutter being tested shall not leak and shall not retain standing water.

P2912.10.2 Collection surface diversion test. A collection surface diversion test shall be performed by introducing water into the gutters or onto the collection surface area. Diversion of the first quantity of water in accordance with the requirements of Section P2912.4 shall be verified.

~~98.~~ 93. Delete Sections P2912.11 through P2912.16, including subsections.

~~99.~~ 94. Delete Section P2913 in its entirety.

~~100.~~ 95. Add Section P3002.2.2 to read:

P3002.2.2 Tracer wire. Nonmetallic sanitary sewer piping that discharges to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the sewer within 12 inches (305 mm) of the pipe and shall be installed from within five feet of the building wall to the point where the building sewer intersects with the public system. At a minimum, one end of the wire shall terminate above grade in an accessible location that is resistant to physical damage, such as with a cleanout or at the building wall.

96. Add Section P3012 Relining Building Sewers and Building Drains.

97. Add Sections P3012.1 through P3012.10 to read:

P3012.1 General. This section shall govern the relining of existing building sewers and building draining piping.

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P3012.2 Applicability. The relining of existing building sewer and building drainage piping shall be limited to gravity drainage piping that is 4 inches (102 mm) in diameter and larger. The relined piping shall be of the same nominal size as the existing piping.

P3012.3 Pre-installation requirements. Prior to commencement of the relining installation, the existing piping sections to be relined shall be descaled and cleaned. After the cleaning process has occurred and water has been flushed through the system, the piping shall be inspected internally by a recorded video camera survey.

P3012.3.1 Pre-installation recorded video camera survey. The video survey shall include verification of the project address location. The video shall include notations of the cleanout and fitting locations, and the approximate depth of the existing piping. The video shall also include notations of the length of piping at intervals no greater than 25 feet.

P3012.4 Permitting. Prior to permit issuance, the code official shall review and evaluate the pre-installment recorded video camera survey to determine if the piping system is capable to be relined in accordance with the proposed lining system manufacturer's installation requirements and applicable referenced standards.

R3012.5 Prohibited applications. Where review of the pre-installation recorded video camera survey reviews that piping systems are not installed correctly or defects exist, relining shall not be permitted. The defective portions of piping shall be exposed and repaired with pipe and fittings in accordance with this code. Defects shall include backgrade or insufficient slope, complete pipe wall deterioration, or complete separations such as from tree root invasion or improper support.

P3012.6 Relining materials. The relining materials shall be manufactured in compliance with applicable standards and certified as required in Section 303. Fold-and-form pipe reline materials shall be manufactured in compliance with ASTM F1504 or ASTM F1871.

P3012.7 Installation. The installation of relining materials shall be performed in accordance with the manufacturer's installation instructions, applicable referenced standards, and this code.

P3012.7.1 Material data report. The installer shall record the data as required by the relining material manufacture and applicable standards. The recorded data shall include the location of the project, relining material type, amount of product installed, and conditions of the installation. A copy of the data report shall be provided to the code official prior to final approval.

P3012.8 Post-installation recorded video camera survey. The completed relined piping system shall be inspected internally by a recorded video camera survey after the system has been flushed and flow tested with water. The video survey shall be submitted to the code official prior to finalization of the permit. The video survey shall be reviewed and evaluated to provide verification that no defects exist. Any defects identified shall be repaired and replaced in accordance with this code.

P3012.9 Certification. The permit holder shall provide a certification in writing to the code official that the relining materials have been installed in accordance with the manufacturer's installation instructions, the applicable standards, and this code.

P3012.10 Approval. Upon verification of compliance with the requirements of Sections 717.1 through 717.9, the code official shall approve the installation.

~~101.~~ 98. Add an exception to Section P3301.1 to read:

Exception: Rainwater nonpotable water systems shall be permitted in accordance with the applicable provisions of Sections P2910 and P2912.

99. Delete the exception for Section P3003.9.2.

~~102.~~ 100. Add Section E3601.8 to read:

E3601.8 Energizing service equipment. The building official shall give permission to energize the electrical service equipment of a one-family or two-family dwelling unit when all of the following requirements have been approved:

1. The service wiring and equipment, including the meter socket enclosure, shall be installed and the service wiring terminated.
2. The grounding electrode system shall be installed and terminated.
3. At least one receptacle outlet on a ground fault protected circuit shall be installed and the circuit wiring terminated.
4. Service equipment covers shall be installed.
5. The building roof covering shall be installed.
6. Temporary electrical service equipment shall be suitable for wet locations unless the interior is dry and protected from the weather.

~~103.~~ 101. Change Section E3802.4 to read:

E3802.4 In unfinished basements. Where Type SE or NM cable is run at angles with joists in unfinished basements, cable assemblies containing two or more conductors of sizes 6 AWG and larger and assemblies containing three or more conductors of sizes 8 AWG and larger shall not require additional protection where

attached directly to the bottom of the joists. Smaller cables shall be run either through bored holes in joists or on running boards. Type NM or SE cable installed on the wall of an unfinished basement shall be permitted to be installed in a listed conduit or tubing or shall be protected in accordance with Table E3802.1. Conduit or tubing shall be provided with a suitable insulating bushing or adapter at the point where cable enters the raceway. The sheath of the Type NM or SE cable shall extend through the conduit or tubing and into the outlet or device box not less than 1/4 inch (6.4 mm). The cable shall be secured within 12 inches (305 mm) of the point where the cable enters the conduit or tubing. Metal conduit, tubing, and metal outlet boxes shall be connected to an equipment grounding conductor complying with Section E3908.13.

~~104.~~ 102. Change Section E3902.16 to read:

E3902.16 Arc-fault protection of bedroom outlets. Branch circuits that supply 120-volt, single phase, 15-ampere and 20-ampere outlets installed in bedrooms shall be protected by any of the following:

1. A listed combination-type arc-fault circuit interrupter installed to provide protection of the entire branch circuit.
2. A listed branch/feeder-type AFCI installed at the origin of the branch-circuit in combination with a listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.
3. A listed supplemental arc protection circuit breaker installed at the origin of the branch circuit in combination with a listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit where all of the following conditions are met:
 - 3.1. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.
 - 3.2. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3 m) for 12 AWG conductors.
 - 3.3. The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.
 4. A listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet on the branch circuit in combination with a listed branch-circuit overcurrent protective device where all of the following conditions are met:

4.1. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.

4.2. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3 m) for 12 AWG conductors.

4.3. The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.

4.4. The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCI and shall be listed as such.

5. Where metal outlet boxes and junction boxes and RMC, IMC, EMT, Type MC or steel-armored Type AC cables meeting the requirements of Section E3908.8, metal wireways or metal auxiliary gutters are installed for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, a listed branch-circuit type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.

6. Where a listed metal or nonmetallic conduit or tubing or Type MC cable is encased in not less than two inches (50.8 mm) of concrete for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, a listed outlet branch-circuit type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.

Exception:

AFCI protection is not required for an individual branch circuit supplying only a fire alarm system where the branch circuit is wired with metal outlet and junction boxes and RMC, IMC, EMT or steel-sheathed armored cable Type AC, or Type MC meeting the requirements of Section E3908.8.

~~105.~~ 103. Change the referenced standards in Chapter 44 as follows (standards not shown remain the same):

Standard Reference Number	Title	Referenced in Code Section Number
ANSI LC1/CSA 6.26-14 <u>6.26-18</u>	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST)	G2411.1, G2411.1.1, G2414.5.3

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NSF-50-09	Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities	P2911.6.1
<u>ASTM F1504-14</u>	<u>Standard Specification for Folded/Formed Poly (Vinyl Chloride) (PVC) for Existing Sewer and Conduit Rehabilitation</u>	<u>P3012.4, P3012.6</u>
<u>ASTM F1871-11</u>	<u>Standard Specification for Folded/Formed Poly (Vinyl Chloride) Pipe Type A for Existing Sewer and Conduit Rehabilitation</u>	<u>P3012.4, P3012.6</u>
<u>CSA B805-18/ICC 805-18</u>	<u>Rainwater Harvesting Systems</u>	<u>P2912.1</u>

104. Change Section AQ104.1.2 to read:

AQ104.1.2 Minimum horizontal dimensions. Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

105. Change the exception to Section AQ104.1.3 to read:

Exception: Under gable roofs with a minimum slope of 6 units vertical in 12 units horizontal (50% slope), portions of a loft with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. See Figure AQ104.1.3.

106. Add Figure AQ104.1.3 Loft Ceiling Height.

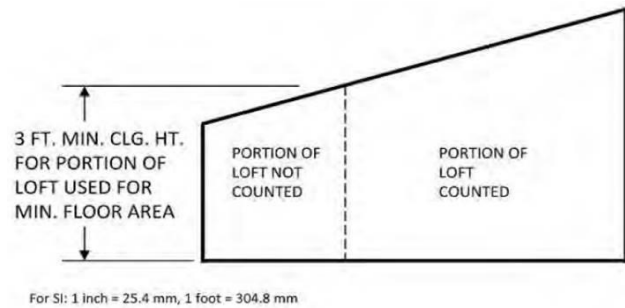


Figure AQ104.1.3
Loft Ceiling Height

107. Change Sections AQ104.2, AQ104.2.1, and AQ104.2.1.2 to read:

AQ104.2 Loft access and egress. The access to and primary egress from lofts shall be of any type described in Sections AQ104.2.1 through AQ104.2.4. The loft access and egress element along its required minimum width shall meet the loft where its ceiling height is not less than 3 feet (914 mm).

AQ104.2.1 Stairways. Stairways accessing lofts shall comply with this code or with Sections AQ104.2.1.1 through AQ104.2.1.7.

AQ104.2.1.2 Headroom. The headroom above stairways accessing a loft shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread, landing, or landing platform nosings in the center of their width, and vertically from the landing platform along the center of its width.

108. Change Sections AQ104.2.1.4 through AQ104.2.1.6 to read:

AQ104.2.1.4 Landings. Intermediate landings and landings at the bottom of stairways shall comply with Section R311.7.6, except that the depth in direction of travel shall be not less than 24 inches (610 mm).

AQ104.2.1.5 Landing platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the loft. The landing platform shall be not less than 20 inches (508 mm) in width and in depth measured horizontally from and perpendicular to the nosing of the landing platform. The landing platform riser height to the loft floor shall be not less than 16 inches (406 mm) and not greater than 18 inches (457 mm).

AQ104.2.1.6 Handrails. Handrails shall comply with Section R311.7.8.

109. Add Section AQ104.2.1.7 to read:

AQ104.2.1.7 Stairway guards. Guards at open sides of stairways, landings, and landing platforms shall comply with Section R312.1.

110. Change Sections AQ 104.2.2.1 and AQ104.2.5 to read:

AQ104.2.2.1 Size and capacity. Ladders accessing lofts shall have a rung width of not less than 12 inches (305 mm), with 10-inch (254 mm) to 14-inch (356 mm) spacing between rungs. Ladders shall be capable of supporting a 300-pound (136 kg) load on any rung. Rung spacing shall be uniform within 3/8 inch (9.5 mm).

AQ104.2.5 Loft Guards. Loft guards shall be located along the open side of lofts. Loft guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall comply with Section R312.1.3 and Table R301.5 for their components.

U. T. Add "Marinas" to the list of occupancies in Section 312.1 of the IBC.

V.A.R. Doc. No. R19-5887; Filed August 28, 2020, 12:27 p.m.

Proposed Regulation

Title of Regulation: 13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10, 13VAC5-95-60).

Statutory Authority: § 36-85.2 of the Code of Virginia.

Public Hearing Information:

September 28, 2020 - 10 a.m. - Google Meet Meeting - The link to access the electronic meeting is meet.google.com/rqj-cmsq-rft, or copy and paste the link into a browser. Additional details and information are available on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Basis: The statutory authority to update the regulation is contained in § 36-85.7 of the Code of Virginia.

Purpose: The intent and goal of this action is to update the Manufactured Home Safety Regulations (MHSR) based on current U.S. Department of Housing and Urban Development (HUD) construction standards. This action will also consider amendments to administrative and enforcement provisions of the MHSR as determined necessary for the administration of

Virginia's Manufactured Home Installation Program. This action ensures that manufactured homes are installed in a safe manner to protect the health, safety, and welfare of the citizens of the Commonwealth.

Substance: The proposed amendments include updating all references to the Federal Installation Standards (24 CFR Part 3285). The proposed regulation will contain minor changes to the provisions of the regulations that have been vetted through the client groups affected by the MHSR and have met no opposition. There is anticipation and request for assistance regarding manufactured housing installation. A more up-to-date enforcement standard is necessary to provide assistance to building officials and local building inspections departments, installers, and home owners regarding installation and inspections procedures and all processes related to the installation of manufactured homes within the Commonwealth.

Issues: The advantage of the revision for the public, building officials, installers, and private citizens are the new mandated HUD installation regulations, which provide minimum requirements for the initial installation of new manufactured homes. New home installation, designs, and instructions have been approved by the Secretary of HUD or a design approval primary inspection agency. The Federal Construction Standards are enforcement provisions for the design, construction, distribution and the installation of manufactured homes. Building officials are responsible for enforcement of the installation standards in the set up of a new manufactured home for footings, foundation systems, anchoring systems, close up of the exterior and interior, additions and alterations, and all system connections done during initial installation. Such aspects shall be subject to and shall comply with the installation instructions provided by the manufacturer of the home.

The amendments will ensure the installation of a manufactured home is in compliance with the federal installation standards by clarifying the certification and license requirements of the installer.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend 13VAC5-95 Virginia Manufactured Home Safety Regulations to make it consistent with federal Housing and Urban Development (HUD) Manufactured Home Installation Standards.¹ Specifically, the proposed amendments would add a definition for "certificate of installation," update the definition of "installer" and require installers to provide a copy of the certificate of installation to homeowners and/or local building officials.

Background. The Board proposes to define "Certificate of installation" as "the certificate provided by the Virginia

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Department of Professional and Occupational Regulation (DPOR) licensed installer, under the Virginia Manufactured Home Safety Regulations, indicating that a manufactured home has been installed in compliance with the federal installation standards." To mirror this, the Board would also modify the current definition of "installer," which is "the person or entity who is retained to engage in or who engages in the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home." The new definition would add the requirement that the installer be "licensed through the Virginia Department of Professional and Occupational Regulation, with the Manufactured Home Contractor (MHC) license designation." The Board of Contractors created the MHC license designation as a distinct specialty classification as part of a periodic review in 2012.² Therefore, this change in definition does not actually affect installers by imposing any new burden associated with licensing. Finally, the Board seeks to amend section 13VAC5-95-60 Installations to add the requirement that installers "shall provide a copy of the certificate of installation to the homeowner and when requested, to the local building official, prior to issuance of the certificate of occupancy."

Estimated Benefits and Costs. The proposed amendments align the language in the regulation with federal requirements. To the extent that the federal requirements promote the protection of buyers and owners of manufactured housing, the proposed amendments would benefit buyers and owners of manufactured housing in Virginia by ensuring that these protections are extended to them.

Installers of manufactured housing may face a small increase in costs from having to provide a certificate of installation, especially if local building officials start to require it prior to issuing a certificate of occupancy. However, such costs are likely to be nominal when compared with the installer's overall cost of doing business.

Businesses and Other Entities Affected. Installers of manufactured housing would be affected. Applicants for the MHC license designation are required to complete manufactured home installer training that is offered by the Department of Housing and Community Development.³ Based on the number of individuals who have completed this training, the Board estimates that up to 856 individuals would be affected by the requirement to provide a certificate of installation to the homeowner and local building official.⁴

Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. While the benefits of increased protection of buyers and owners of manufactured housing may be substantial, there may be a small increase in costs for installers that is not directly offset. Thus, adverse impact is indicated for this action.

Small Businesses⁵ Affected. The proposed amendments would affect small businesses that belong to or employ manufactured home installers. However, the cost of providing a certificate of installation is likely to be small and unlikely to have a disproportionate impact on small businesses.

Localities⁶ Affected.⁷ The proposed amendments potentially affect installers of manufactured homes in all localities. The proposed amendments are unlikely to introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to cause any changes to total employment in the manufacturing, retail, or installation of manufactured housing.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹See 24 CFR Part 3285: <https://www.law.cornell.edu/cfr/text/24/part-3285>

² See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2664>

³See <https://www.dhcd.virginia.gov/sites/default/files/Docx/manufactured-housing/how-to-mh-licensed-installer-2019.pdf> for current requirements

⁴Only 300 of these identified as installers; the rest are manufacturers, brokers, dealers and salespersons. See https://townhall.virginia.gov/L/GetFile.cfm?File=61\5248\8851\AgencyState%20ment_DHCD_8851_v1.pdf

⁵Pursuant 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."

⁶"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments are for consistency with federal Housing and Urban Development Manufactured Home Installation Standards and add a definition for "certificate of installation," update the definition of "installer," and require installers to provide a copy of the certificate of installation to homeowners or local building officials.

13VAC5-95-10. Definitions.

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

"Administrator" means the Director of DHCD or his designee.

"Certificate of installation" means the certificate provided by the Virginia Department of Professional and Occupational Regulation licensed installer, under the Virginia Manufactured Home Safety Regulations, indicating that a manufactured home has been installed in compliance with the federal installation standards.

"DHCD" means the Virginia Department of Housing and Community Development.

"Dealer" means any person engaged in the sale, lease, or distribution of manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use of which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USC § 5401 et seq.).

"Federal installation standards" means the federal Model Manufactured Home Installation Standards (24 CFR Part 3285).

"Federal regulations" means the federal Manufactured Home Procedural and Enforcement Regulations (24 CFR Part 3282).

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Installation" means completion of work to include, but not be limited to, stabilizing, supporting, anchoring, and closing up a manufactured home and joining sections of a multi-section manufactured home, when any such work is governed by the federal installation standards.

"Installer" means the person or entity, licensed through the Virginia Department of Professional and Occupational Regulation, with the Manufactured Home Contractor (MHC) license designation, who is retained to engage in or who engages in the business of directing, supervising, controlling, or correcting the ~~initial~~ installation of a manufactured home.

"Label," "certification label," or "HUD label" means the certification label prescribed by the federal standards.

"Local building official" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Noncompliance" means a failure of a manufactured home to comply with a federal manufactured home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of HUD.

"Serious defect" means any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

"Standards" or "federal standards" means the federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280) adopted by HUD, in accordance with authority in the Federal Act. The standards were enacted December 18, 1975, and amended May 11, 1976, to become effective June 15, 1976.

"State administrative agency" or "SAA" means DHCD, which is responsible for the administration and enforcement of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia throughout Virginia and of the plan authorized by § 36-85.5 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Terms defined within the federal regulations and federal standards shall have the same meanings in this chapter.

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13VAC5-95-60. Installations.

~~Distributors, installers, or dealers~~ Installers setting up a manufactured home shall perform such installation in accordance with the manufacturer's installation instructions and shall provide a copy of the certificate of installation to the homeowner and when requested, to the local building official prior to issuance of the certificate of occupancy.

VA.R. Doc. No. R19-5981; Filed August 17, 2020, 2:17 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-430. Insurance Data Security Risk Assessment and Reporting (adding 14VAC5-430-10 through 14VAC5-430-70).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: October 26, 2020.

Agency Contact: Katie Johnson, Insurance Policy Advisor, State Corporation Commission, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The proposed action implements the provisions of the Insurance Data Security Act (§ 38.2-621 et seq. of the Code of Virginia), Chapter 264 of the 2020 Acts of Assembly, and establishes cybersecurity initiatives and notification procedures for insurers, insurance agencies, and licensees or third-party providers.

AT RICHMOND, AUGUST 13, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00168

Ex Parte: In the matter of Adopting Rules to Implement the Requirements of the Insurance Data Security Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. The Bureau of Insurance ("Bureau") has submitted to the Commission proposed additions to the rules set forth in Title 14 of the Virginia Administrative Code, by adding Chapter 430, entitled Rules Governing Insurance Data Security Risk Assessment and Reporting, 14VAC5-430-10 et seq. ("Rules"). A copy of this order may also be found at the Commission's website: <https://nam02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffcc.virginia.gov%2Fpages%2FCase-Information&data=02%7C01%7CKay.Burnett%40scc.virginia.gov%7C157efef3cdc94c0d5a9608d7e61b819f%7C1791a7f12629474f8283d4da7899c3be%7C0%7C0%7C637230878126517667&sddata=VPqe1SvcD3566J1vUBAwTX2PYkCCNH7KK3Knw2xNGFY%3D&reserved=0>.

The addition of Chapter 430 to Title 14 of the Virginia Administrative Code is necessary to implement the provisions of Title 38.2, Chapter 6, Article 2, known as the Insurance Data Security Act, § 38.2-621, et seq. of the Code which was added during the 2020 General Assembly (Chapter 0264 of the 2020 Acts of Assembly), which requires that certain cybersecurity initiatives and notification procedures be implemented by insurers, insurance agencies and licensees or third-party providers defined or governed by Title 38.2 of the Code. The proposed revisions as contained in Chapter 430 of the Virginia Administrative Code include the following:

- Requirements for implementing a periodic Information Security Program Risk Assessment, which will, among other things, identify internal or external cybersecurity threats and address safeguards to manage the potential threats.
- Requirements for implementing Information Security Program Security Measures to manage, protect against and respond to cybersecurity threats.
- Requirements and obligations of the Bureau's licensees who engage third-party providers to ensure compliance with the Code and the Rules.

- Requirements for reporting cybersecurity events to the Commissioner of Insurance and maintaining related records.

NOW THE COMMISSION, is of the opinion that the proposed revisions submitted by the Bureau to revise Title 14 of the Virginia Administrative Code by adding Chapter 430, Rules 14VAC5-430-10 through 14VAC5-430-70, should be considered for adoption with a proposed effective date of December 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to add Rules 14VAC5-430-10 through 14VAC5-430-70 is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the revisions to the Rules, shall file such comments or hearing request on or before October 26, 2020, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2020-00168. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://nam02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsc.virginia.gov%2Fcasecomments%2FSubmit-Public-Comments&data=02%7C01%7CKay.Burnett%40sc.virginia.gov%7C157efef3cdc94c0d5a9608d7e61b819f%7C1791a7f12629474f8283d4da7899c3be%7C0%7C0%7C637230878126517667&sdata=oKCbezmtcok%2BgWik%2FMo1EeUHWfn5rKheq3sVnUhgAR4%3D&reserved=0>. All comments shall reference Case No. INS-2020-00168.

(3) If no written request for a hearing on the proposal to revise the Rules, as outlined in this Order, is received on or before October 26, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to revise the Rules to all insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission, to qualified reinsurers in Virginia, and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to revise the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed revisions to the Rules on the Commission's website: <https://nam02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsc.virginia.gov%2Fpages%2FCase-Information&data=02%7C01%7CKay.Burnett%40sc.virginia.gov%7C157efef3cdc94c0d5a9608d7e61b819f%7C1791a7f12629474f8283d4da7899c3be%7C0%7C0%7C637230878126517667&sdata=VPqe1SvcD3566J1vUBAwTX2PYkCCNH7KK3Knw2xNGFY%3D&reserved=0>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A copy of this Order shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, by electronic mail at MBrowder@oag.state.va.us, and by first class mail, postage prepaid to 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

CHAPTER 430
INSURANCE DATA SECURITY RISK ASSESSMENT
AND REPORTING

14VAC5-430-10. Applicability and scope.

This chapter sets forth rules to carry out the provisions of the Insurance Data Security Act, Article 2 (§ 38.2-621, et seq.) of Chapter 6 of Title 38.2 of the Code of Virginia, and sets minimum standards for risk assessment and security standards required of all licensees. However, as outlined, the specific requirements for licensees may differ in certain circumstances, depending on the size and complexity of the licensee. This chapter applies to and protects physical and electronic data, including nonpublic information, stored, transmitted, and processed across various information systems or any other media used by licensees.

14VAC5-430-20. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court or the commission, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

14VAC5-430-30. Definitions.

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

"Authorized person" means a person known to and authorized by the licensee and determined to be necessary and appropriate to have access to the nonpublic information held by the licensee and its information systems.

"Bureau" means the Bureau of Insurance.

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"Commissioner" means the Commissioner of Insurance.

"Consumer" means an individual, including any applicant, policyholder, former policyholder, insured, beneficiary, claimant, and certificate holder, who is a resident of Virginia and whose nonpublic information is in the possession, custody, or control of a licensee or an authorized person.

"Cybersecurity event" means an event resulting in unauthorized access to, disruption of, or misuse of an information system or nonpublic information in the possession, custody, or control of a licensee or an authorized person. "Cybersecurity event" does not include (i) the unauthorized acquisition of encrypted nonpublic information if the encryption, process, or key is not also acquired, released, or used without authorization or (ii) an event in which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

"Encrypted" or "encryption" means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key.

"Home state" means the jurisdiction in which the producer maintains its principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Information security program" means the administrative, technical, and physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle nonpublic information.

"Information system" means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic information, as well as any specialized system, such as industrial or process control systems, telephone switching and private branch exchange systems, and environmental control systems.

"Level one licensee" means any licensee with more than 10 employees and authorized persons.

"Level two licensee" means any licensee with 10 or fewer employees and authorized persons. A level two licensee may choose to comply with the requirements for a level one licensee. If a licensee ceases to qualify as a level two licensee, the licensee shall have 180 days from the date it ceases to qualify to comply with the requirements of a level one licensee.

"Licensee" means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of Virginia. "Licensee" does not include a purchasing group or a risk retention group chartered and licensed in a state other than

Virginia or a person that is acting as an assuming insurer that is domiciled in another state or jurisdiction.

"Multi-factor authentication" means authentication through verification of at least two of the following types of authentication factors:

1. Knowledge factors, such as a password;
2. Possession factors, such as a token or text message on a mobile device; or
3. Inherence factors, such as a biometric characteristic.

"Nonpublic information" means information that is not publicly available information and is:

1. Business-related information of a licensee the tampering with which, or the unauthorized disclosure, access, or use of which, would cause a material adverse impact to the business, operations, or security of the licensee;
2. Any information concerning a consumer that because of name, number, personal mark, or other identifier can be used to identify such consumer, in any combination with a consumer's (i) social security number; (ii) driver's license number or nondriver identification card number; (iii) financial account, credit card, or debit card number; (iv) security code, access code, or password that would permit access to a consumer's financial account; (v) passport number; (vi) military identification number; or (vii) biometric records; or
3. Any information or data, except age or gender, in any form or medium created by or derived from a health care provider or a consumer that can be used to identify a particular consumer, and that relates to (i) the past, present, or future physical, mental, or behavioral health or condition of any consumer or a member of the consumer's family; (ii) the provision of health care to any consumer; or (iii) payment for the provision of health care to any consumer.

"Third-party service provider" means a person, not otherwise defined as a licensee, that contracts with a licensee to maintain, process, or store nonpublic information or otherwise is permitted access to nonpublic information through its provision of services to the licensee, or an insurance-support organization.

14VAC5-430-40. Information security program risk assessment.

A. In addition to the information security program requirements of § 38.2-623 of the Code of Virginia, each level one licensee shall conduct periodic risk assessments consistent with the objectives of the most current revision of NIST SP 800-30, NIST SP 800-39, or other substantially similar standard, taking into consideration the level one licensee's size and complexity.

1. Each level one licensee shall consider cybersecurity risks in its enterprise risk management process.

2. Compliance with the provisions of this subsection is required for all level one licensees on or before (insert date one year from the effective date of this chapter).

B. In addition to the information security program requirements of § 38.2-623 of the Code of Virginia, taking into consideration the level two licensee's size and complexity, each level two licensee shall conduct a periodic risk assessment consistent with the following elements:

1. Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information held by a level two licensee;

2. Assess the likelihood and potential damage of these threats taking into consideration the sensitivity of nonpublic information in the possession, custody, or control of the licensee and its authorized persons;

3. Assess the sufficiency of policies, procedures, information systems, and other safeguards in place to manage these threats, including consideration of threats in each relevant area of the licensee's operations, such as employee training; information classification that includes the processing, storage, transmission, and disposal of information; and the detection, prevention, and response to attacks and intrusions; and

4. Implement information safeguards to manage the threats identified in the licensee's ongoing assessment and, no less than annually, assess the effectiveness of the key controls, systems, and procedures.

Compliance with the provisions of this subsection is required of all level two licensees on or before July 1, 2022.

14VAC5-430-50. Information security program security measures.

A. As part of its information security program and based on its risk assessments, each level one licensee shall implement the appropriate measures consistent with NIST SP 800-53, NIST SP 800-171, or any substantially similar framework based on these standards, taking into consideration its size and complexity. Compliance with the provisions of this subsection is required for all level one licensees on or before (insert date one year from the effective date of this chapter).

B. As part of its information security program and based on its risk assessments, each level two licensee shall implement appropriate security measures as follows:

1. Manage the data, personnel, devices, systems, and facilities of the licensee in accordance with its identified risk;

2. Protect, by encryption or other appropriate means, all nonpublic information while being transmitted over an external network;

3. Protect, by encryption or other appropriate means, all nonpublic information stored on portable computing, storage devices, or media;

4. Adopt secure development practices for applications developed in-house and used by the licensee;

5. Adopt procedures for evaluating and assessing the security of externally developed applications utilized by the licensee;

6. Implement effective controls, including multi-factor authentication, for authorized individuals to access nonpublic information; and

7. Use audit trails or audit logs designed to detect and respond to cybersecurity events and to reconstruct material financial transactions.

Compliance with the provisions of this subsection is required of all level two licensees on or before July 1, 2022.

C. Effective July 1, 2022, each licensee that utilizes a third-party service provider shall:

1. Exercise due diligence in selecting a third-party service provider; and

2. Require the third-party service provider to implement appropriate administrative, technical, and physical measures to protect and secure the information systems and nonpublic information that are accessible to, or held by, the third-party service provider.

14VAC5-430-60. Reporting cybersecurity events to the commissioner.

A. Reporting cybersecurity events to the commissioner.

1. Once a licensee has determined that a cybersecurity event has occurred and the licensee has a duty to report it to the commissioner pursuant to § 38.2-625 of the Code of Virginia, the licensee shall notify the commissioner within three business days that it has information to report, using the email address designated by the bureau. This notification should include the name, telephone number, and email address of the individual who is the licensee's designated contact for the cybersecurity event.

2. Instructions for communicating the information required by § 38.2-625 of the Code of Virginia to the commissioner through a secure portal will be provided by the bureau in response to the email.

3. The licensee shall update the commissioner on the progress of its investigation as information becomes known to the licensee until the licensee has provided all the information set forth in § 38.2-625 of the Code of Virginia.

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4. If also required to notify consumers under § 38.2-626 of the Code of Virginia and 14VAC5-430-70, licensees shall (i) provide the commissioner with a copy of the notice template and any documentation provided to consumers and (ii) maintain a list of consumers notified and retain the list for the longer of five years or the timeframe established by § 38.2-624 D of the Code of Virginia.

B. Except where nonpublic information has been accessed, once a domestic insurance company has notified the commissioner of the date, nature, and scope of the cybersecurity event, the company may report all remaining information required by § 38.2-625 of the Code of Virginia (i) annually in a separate report, (ii) in the certification described in § 38.2-623 H of the Code of Virginia, or (iii) on a continuing basis through the portal established for the company by the bureau for this purpose.

C. Unless exempted by § 38.2-629 A 2 of the Code of Virginia, producers whose home state is Virginia shall report cybersecurity events to the commissioner in accordance with subsection A of this section.

D. If required to report to the commissioner, nondomestic insurance companies, and, unless exempted under § 38.2-629 A 2 of the Code of Virginia, producers whose home state is not Virginia shall notify the commissioner of the cybersecurity event pursuant to § 38.2-625 A 2 of the Code of Virginia as set forth in subsection A of this section.

14VAC5-430-70. Consumer notification provisions.

A. Licensees, except those exempted under § 38.2-629 A 2 of the Code of Virginia, that determine a cybersecurity event has occurred and has caused or has a reasonable likelihood of causing identity theft or other fraud to consumers whose information was accessed or acquired shall notify those consumers in accordance with § 38.2-626 of the Code of Virginia, subject to any applicable numerical threshold.

B. Each licensee required to notify consumers of a cybersecurity event that does not intend to notify consumers based on a belief that the cybersecurity event does not have a reasonable likelihood of causing identity theft or other fraud to the consumers shall notify the commissioner of its position and provide a detailed explanation supporting the licensee's position.

C. If, upon review of the report, the cybersecurity event does have a reasonable likelihood of causing identity theft or other fraud to the consumer, the commissioner may require the licensee to notify the affected consumers in accordance with § 38.2-626 of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-430)

National Institute of Standards and Technology, Computer Security Division, Information Technology Laboratory, 100

Bureau Drive (Mail Stop 8930), Gaithersburg, MD 20899-8930, sec-cert@nist.gov

[NIST, Special Publication, Guide for Conducting Risk Assessments, 800-30 \(rev. 1, 9/2012\)](#)

[NIST, Special Publication, Managing Information Security Risk Organization, Mission, and Information System View, 800-39 \(eff. 3/2011\)](#)

[NIST, Special Publication, Security and Privacy Controls for Federal Information Systems and Organizations, 800-53 \(rev. 4, 4/2013\)](#)

[NIST, Special Publication, Protecting Controlled Unclassified Information, 800-171 \(rev. 2, 2/2020\)](#)

VA.R. Doc. No. R21-6459; Filed August 14, 2020, 1:13 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Proposed Regulation

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-260 through 18VAC60-21-301).

Statutory Authority: §§ 54.1-2400 and 54.1-2709.5 of the Code of Virginia.

Public Hearing Information:

October 9, 2020 - 1 p.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Boardroom 3, Henrico, VA 23233

Public Comment Deadline: November 13, 2020.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. Specific statutory reference to issuance of sedation and anesthesia permits and requirements for equipment standards are in § 54.1-2709.5 of the Code of Virginia.

Purpose: The regulatory advisory panel of experts and the members of the Board of Dentistry heard comment on the current regulations for administration of sedation and anesthesia and reviewed current guidelines published by the American Dental Association. Accordingly, amendments are recommended to allow for exception to rules if there are extenuating circumstances in providing care to certain patients. Amendments are also recommended to address

concerns about patient safety, such as a requirement for a dentist to follow the regulations for the level of sedation that has been induced and a requirement for there to be a three-person team in the administration of moderate sedation during a dental procedure.

Administration of sedation and anesthesia in a dental office requires appropriate expertise, equipment, and monitoring in order to adequately and immediately address any adverse reaction or emergency situation. Regulations proposed by the board specify what is required to protect public health and safety in such administration.

Substance: The substantive provisions being proposed include:

- Clarification of supervision of certified registered nurse anesthetists;
- Clarification that the regulations address administration to patients of any age, but that the specific guidelines for pediatric patients should be consulted when practicing pediatric dentistry;
- Requirement for a focused physician examination to be included in the patient evaluation for administration of controlled substances;
- Allowances for special needs patients in the evaluation for, administration of, and monitoring of sedation and anesthesia with documentation in the patient record of the extenuating circumstances that necessitate exceptions to regulatory requirements;
- Clarification of the requirements for minimal sedation and inclusion of oxygen saturation with pulse oximeter as required equipment;
- Requirement that the dentist must follow requirements for the level of sedation that has been induced and that administration of one drug in excess of recommended dosage or of two or more drugs, exceeds minimal sedation;
- Clarification that no sedating medication can be administered to a child 12 years or younger prior to arrival at the dental office;
- Clarification of use of the terms continuously and continually, as used in the context of the regulation;
- Consideration of extenuating patient circumstances in the monitoring and discharge requirements;
- Addition of oxygen saturation levels to the monitoring requirements;
- Requirement for a three-person team for moderate sedation – the operating dentist, one person to monitor the patient, and one person to assist the dentist;

- Clarification that requirements for moderate sedation or deep/general anesthesia must be followed by the dentist if he administers controlled substances or if he provides it in his office with someone else doing the administration; and

- Requirement for a longer period of monitoring if a pharmacological reversal agent has been administered.

Issues: The primary advantage to the public is more clarity and greater protection for patients in the administration of various levels of sedation or anesthesia in a dental office. There are no disadvantages.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes several amendments concerning administration of sedation or anesthesia in dental offices.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. For one other amendment, there is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. The Board proposes to make numerous changes to improve clarity. Amending language to improve clarity is beneficial in that there is reduced likelihood that those affected by the regulation and other interested members of the public misunderstand or are under-informed concerning requirements.

The Board has heard comments from dentists describing patients and situations in which there are physical or mental conditions that make it impossible to follow the standard process for administration of sedation or anesthesia. Such conditions and circumstances at times preclude the patient from receiving needed dental care. The Board proposes to allow in selected circumstances sedation or general anesthesia without establishing an intravenous line. These selected circumstances include very brief procedures or periods of time within a procedure, or the establishment of intravenous access after deep sedation or general anesthesia that has been induced because of poor patient cooperation. To the extent that safety is not significantly compromised during these selected circumstances, this proposal should produce a net benefit in that affected patients would newly be able to get needed dental care.

A pulse oximeter is currently required for monitoring oxygen saturation for minimal sedation, moderate sedation, and deep sedation. The Board proposes to also require that a pulse oximeter be used in sedation through inhalation analgesia (nitrous oxide only). A pulse oximeter costs approximately \$15. To the extent that oxygen saturation problems may occur

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in nitrous oxide only sedation, and that the use a pulse oximeter increases the likelihood that these problems are detected, this proposed amendment likely produces a net benefit.

For moderate sedation,¹ the current regulation requires that there be at least a two-person treatment team. The team must include the operating dentist and a second person to monitor the patient and to assist. The monitor may be a dental hygienist, dental assistant, or nurse who is under the operating dentist's direction, or another dentist, anesthesiologist, or certified registered nurse anesthetist.

The Board proposes to require that the treatment team consist of at least three people with moderate sedation. The Board does not believe that the dentist doing the dental procedure nor the person assisting the operating dentist can appropriately monitor the patient while doing other duties. Based upon public comment, there are dentists who believe that a two-person team is sufficient for patient safety.

Adding a third person to the team would add costs for dental practices that are not already using a three-person (or more) treatment team. Some practices may have to hire entirely new staff. Of the professions that would qualify to be the third person in the team, dental assistant would be the least costly to hire.² Dental assistants earn on average \$44,640 in wages annually in the Commonwealth.³ This figure does not include benefits.

Other practices may be able to take existing staff away from their existing duties for part of the workday. This produces cost as well; these employees would not be producing the work associated with their existing duties during the time they are taken away to be the third member of the moderate sedation treatment team. The value (per hour) of this cost can be estimated to be the average hourly wage of these workers. Dental assistants earn on average \$21.46 per hour in Virginia.⁴

Adding a third person to the treatment team may or may not make a large difference in patient safety for moderate sedation. Without this information, an accurate comparison of the benefits to the costs cannot be made.

Businesses and Entities Affected. The proposed amendments affect dental practices and other venues where dental services are provided. Most would qualify as small businesses. There are 7,463 dentists licensed in Virginia.

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

Projected Impact on Employment. The proposal to require that at least three people be part of the treatment team for moderate sedation may result in some dental practices hiring additional staff.

Effects on the Use and Value of Private Property. The proposal to require that at least three people be part of the

treatment team for moderate sedation would increase costs for dental practices that provide moderate sedation and do not already include at least three people as part of the treatment team. This may moderately reduce the net value of affected dental practices.

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 proposal to require that at least three people be part of the treatment team for moderate sedation would increase costs for dental practices that utilize moderate sedation and do not already include at least three people as part of the treatment team.

Alternative Method that Minimizes Adverse Impact. If adding a third person to moderate sedation treatment teams makes a large difference in patient safety, then there are no clear alternative methods that both reduce adverse impact and meet the intended policy goals. If adding a third person to moderate sedation treatment teams does not make a large difference in patient safety, then eliminating the proposed required third person would reduce adverse impact without significantly affecting the policy goal of patient safety.

Adverse Impacts:

Businesses. The proposal to require that at least three people be part of the treatment team for moderate sedation would increase costs for dental practices that utilize moderate sedation and do not already include at least three people as part of the treatment team.

Localities. The proposed amendments are unlikely to adversely affect localities.

Other Entities. The proposed amendments are unlikely to adversely affect other entities.

¹Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

²Moderate sedation is defined as "a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained."

³See U.S. Bureau of Labor Statistics State Occupational Employment and Wage Estimates: https://www.bls.gov/oes/current/oes_va.htm

⁴Ibid

⁵Ibid

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

Summary:

The proposed amendments include (i) clarification of supervision of certified registered nurse anesthetists; (ii) clarification that the regulations address administration to patients of any age, but that the specific guidelines for pediatric patients should be consulted when practicing pediatric dentistry; (iii) a requirement for a focused physician examination to be included in the patient evaluation for administration of controlled substances; (iv) allowances for special needs patients in the evaluation for, administration of, and monitoring of sedation and anesthesia with documentation in the patient record of the extenuating circumstances that necessitate exceptions to regulatory requirements; (v) clarification of the requirements for minimal sedation and inclusion of oxygen saturation with pulse oximeter as required equipment; (vi) requirements that the dentist must follow requirements for the level of sedation that has been induced and that administration of one drug in excess of recommended dosage, or of two or more drugs, exceeds minimal sedation; (vii) clarification that no sedating medication can be administered to a child 12 years or younger prior to arrival at the dental office; (viii) clarification of use of the terms "continuously" and "continually"; (ix) consideration of extenuating patient circumstances in the monitoring and discharge requirements; (x) addition of oxygen saturation levels to the monitoring requirements; (xi) a requirement for a three-person team for moderate sedation, including the operating dentist, one person to monitor the patient, and one person to assist the dentist; (xii) clarification that requirements for moderate sedation or deep/general anesthesia must be followed by the dentist if the dentist administers controlled substances or if the dentist provides it in dentist office with someone else doing the administration; and (xiii) requirement of a longer period of monitoring if a pharmacological reversal agent has been administered.

Part I
General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

- "Board"
- "Dental hygiene"
- "Dental hygienist"
- "Dentist"

- "Dentistry"
- "License"
- "Maxillofacial"
- "Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

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C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, ~~or~~ a dental assistant II, or a certified registered nurse anesthetist or the level of supervision that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist ~~or~~ a dental assistant, or a certified registered nurse anesthetist who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, ~~or~~ (iii) preparing the patient for dismissal following treatment, or (iv) administering topical local anesthetic, sedation, or anesthesia as authorized by law or regulation.

"Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist

regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

"Continual" or "continually" means repeated regularly and frequently in a steady succession.

"Continuous" or "continuously" means prolonged without any interruption at any time.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes ~~"anxiolysis" (the~~ the ~~diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of~~ ~~consciousness)~~ consciousness and includes "inhalation analgesia" when

used in combination with any ~~anxiolytic~~ sedating agent administered prior to or during a procedure.

"Moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Provide" means, in the context of regulations for moderate sedation or deep sedation/general anesthesia, to supply, give, or issue sedating medications. A dentist who does not hold the applicable permit cannot be the provider of moderate sedation or deep sedation/general anesthesia.

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

Part VI

Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. ~~Application of Part VI:~~ of this chapter:

~~This part applies~~ 1. Applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

2. Addresses the minimum requirements for administration to patients of any age. Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures, issued by the American Academy of Pediatrics and American Academy of Pediatric Dentistry, should be consulted when practicing pediatric dentistry.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled ~~drugs~~ substances must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. An appropriate medical history and patient evaluation, including medication use and a focused physical exam, shall be performed before the decision to administer controlled substances for dental treatment is made. The decision to administer controlled ~~drugs~~ substances for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. Moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

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D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;
2. Review of medical history and current conditions, including the patient's weight and height or, if appropriate, the body mass index;
3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;
4. Preoperative vital signs;
5. A record of the name, dose, and strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;
6. Monitoring records of all required vital signs and physiological measures recorded ~~every five minutes~~ continually; and
7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.
2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or
2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.
2. The person monitoring the patient shall:
 - a. Have the patient's entire body in sight;
 - b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

L. A dentist who allows the administration of general anesthesia, deep sedation, or moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.

M. Special needs patients. If a patient is mentally or physically challenged, and it is not possible to have a comprehensive physical examination or appropriate laboratory tests prior to administering care, the dentist is responsible for documenting in the patient record the reasons preventing the recommended preoperative management. In selected circumstances, sedation or general anesthesia may be utilized without establishing an intravenous line. These selected circumstances include very brief procedures or periods of time, which may occur in some patients; or the establishment of intravenous access after deep sedation or general anesthesia has been induced because of poor patient cooperation.

18VAC60-21-270. Administration of local anesthesia.

A dentist may administer or use the services of the following personnel to administer local anesthesia:

1. A dentist;
2. An anesthesiologist;
3. A certified registered nurse anesthetist under ~~his medical~~ the dentist's direction and indirect supervision;
4. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older under his indirect supervision;

5. A dental hygienist to administer Schedule VI topical oral anesthetics under indirect supervision or under his order for such treatment under general supervision; or

6. A dental assistant or a registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under indirect supervision.

18VAC60-21-279. Administration of ~~only~~ inhalation analgesia (nitrous oxide) oxide only.

A. Education and training requirements. A dentist who utilizes nitrous oxide shall have training in and knowledge of:

1. The appropriate use and physiological effects of nitrous oxide, the potential complications of administration, the indicators for complications, and the interventions to address the complications.
2. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer nitrous oxide:
 - a. A dentist;
 - b. An anesthesiologist;
 - c. A certified registered nurse anesthetist under ~~his medical~~ the dentist's direction and indirect supervision;
 - d. A dental hygienist with the training required by 18VAC60-25-100 B and under indirect supervision; or
 - e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of nitrous oxide, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

- a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or
- b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

D. Equipment requirements. A dentist who utilizes nitrous oxide only or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

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1. Blood pressure monitoring equipment;
2. Source of delivery of oxygen under controlled positive pressure;
3. Mechanical (hand) respiratory bag; ~~and~~
4. Suction apparatus; and
5. Oxygen saturation with pulse oximeter, unless extenuating circumstances exist and are documented in the patient's record.

E. Required staffing. When only nitrous oxide/oxygen is administered, a second person in the operatory is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

F. Monitoring requirements.

1. Baseline vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to administration of nitrous oxide analgesia, intraoperatively as necessary, and prior to discharge, unless extenuating circumstances exist and are documented in the patient's record.
2. Continual clinical observation of the patient's responsiveness, color, respiratory rate, and depth of ventilation shall be performed.
3. Once the administration of nitrous oxide has begun, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.
4. Monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.
5. Upon completion of nitrous oxide administration, the patient shall be administered 100% oxygen for a minimum of five minutes to minimize the risk of diffusion hypoxia.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure and heart rate, shall be taken and recorded prior to discharge, unless extenuating circumstances exist and are documented in the patient's record.
2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-21-280. Administration of minimal sedation.

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:

1. The medications used, the appropriate dosages, the potential complications of administration, the indicators for complications, and the interventions to address the complications.
2. The physiological effects of minimal sedation, the potential complications of administration, the indicators for complications, and the interventions to address the complications.
3. The use and maintenance of the equipment required in subsection D of this section.

B. No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dental office or treatment facility.

C. Delegation of administration.

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:

- a. A dentist;
- b. An anesthesiologist;
- c. A certified registered nurse anesthetist under ~~his~~ medical the dentist's direction and indirect supervision;
- d. A dental hygienist with the training required by 18VAC60-25-100 ~~C~~ B only for administration of nitrous oxide/oxygen ~~with the dentist present in the operatory~~ under indirect supervision; or
- e. A registered nurse upon his direct instruction and under immediate supervision.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel working under indirect supervision to administer local anesthesia to numb an injection or treatment site:

- a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or
- b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

~~3. If minimal sedation is self administered by or to a patient 13 years of age or older before arrival at the dental office or treatment facility, the dentist may only use the~~

~~personnel listed in subdivision 1 of this subsection to administer local anesthesia.~~

D. Equipment requirements. A dentist who utilizes minimal sedation or who directs the administration by another licensed health professional as permitted in subsection C of this section shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment;
2. Source of delivery of oxygen under controlled positive pressure;
3. Mechanical (hand) respiratory bag;
4. Suction apparatus; and
5. Pulse oximeter.

E. Required staffing. The treatment team for minimal sedation shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I.

F. Monitoring requirements.

1. Baseline vital signs to include blood pressure, respiratory rate, ~~and~~ heart rate, and oxygen saturation shall be taken and recorded prior to administration of sedation and prior to discharge.
2. Blood pressure, oxygen saturation, respiratory rate, and pulse shall be monitored ~~continuously~~ continually during the procedure unless extenuating circumstances exist and are documented in the patient's record.
3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-260 I monitors the patient at all times until discharged as required in subsection G of this section.
4. ~~If nitrous Nitrous oxide/oxygen is may be used in addition to any with one other pharmacological agent, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off in the recommended dosage for minimal sedation. If deeper levels of sedation are produced, the regulations for the induced level shall be followed. The administration of one drug in excess of the maximum recommended dose or of two or more drugs, with or without nitrous oxide, exceeds minimal sedation~~

and requires compliance with the regulations for the level of sedation induced.

5. Monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in subsection C of this section. Only the dentist or another qualified licensed health professional identified in subsection C of this section may turn the nitrous oxide/oxygen machines on or off.

6. If any other pharmacological agent is used in addition to nitrous oxide/oxygen and a local anesthetic, requirements for the induced level of sedation must be met.

G. Discharge requirements.

1. The dentist shall not discharge a patient until he exhibits baseline responses in a post-operative evaluation of the level of consciousness. Vital signs, to include blood pressure, respiratory rate, ~~and~~ heart rate, and oxygen saturation shall be taken and recorded prior to discharge unless extenuating circumstances exist and are documented in the patient's record.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. Pediatric patients shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

18VAC60-21-290. Requirements for a moderate sedation permit.

A. No dentist may ~~employ or use~~ provide or administer moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer moderate sedation.

C. To determine eligibility for a moderate sedation permit, a dentist shall submit the following:

1. A completed application form;
2. The application fee as specified in 18VAC60-21-40;
3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section; and

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4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer moderate sedation. A dentist may be issued a moderate sedation permit to administer by any method by meeting one of the following criteria:

1. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

2. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in moderate sedation, and (iii) management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students in effect at the time the training occurred.

E. Additional training required. Dentists who administer moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of moderate sedation.

A. Delegation of administration.

1. A dentist who does not hold a permit to provide or administer moderate sedation shall only ~~use~~ utilize the services of a qualified dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed outpatient surgery center, a dentist who does not hold a permit to provide or administer moderate sedation shall ~~use~~ utilize a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.

2. A dentist who holds a permit may administer or use the services of the following personnel to administer moderate sedation:

a. A dentist with the training required by 18VAC60-21-290 D to administer by any method and who holds a moderate sedation permit;

b. An anesthesiologist;

c. A certified registered nurse anesthetist under the ~~medical~~ direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D and holds a moderate sedation permit or under the supervision of a doctor of medicine or osteopathic medicine; or

d. A registered nurse upon ~~his~~ the dentist's direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D and holds a moderate sedation permit.

3. ~~If minimal sedation is self administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia.~~ No sedating medication shall be prescribed for ~~or administered~~ administration to a patient 12 years of age or younger prior to ~~his~~ the patient's arrival at the dentist office or treatment facility.

4. Preceding the administration of moderate sedation, a permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

5. A dentist who delegates administration of moderate sedation shall ensure that:

a. All equipment required in subsection B of this section is present, in good working order, and immediately available to the areas where patients will be sedated and treated and will recover; and

b. Qualified staff is on site to monitor patients in accordance with requirements of subsection D of this section.

B. Equipment requirements. A dentist who provides or administers or who utilizes a qualified anesthesia provider to administer moderate sedation shall have available the following equipment in sizes for adults or children as appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;
4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;
5. Pulse oximetry;
6. Blood pressure monitoring equipment;
7. Pharmacologic antagonist agents;
8. Source of delivery of oxygen under controlled positive pressure;
9. Mechanical (hand) respiratory bag;
10. Appropriate emergency drugs for patient resuscitation;
11. Electrocardiographic monitor if a patient is receiving parenteral administration of sedation or if the dentist is using titration;
12. Defibrillator;
13. Suction apparatus;
14. Temperature measuring device;
15. ~~Throat pack~~ Airway protective device;
16. Precordial or pretracheal stethoscope; ~~and~~
17. An end-tidal carbon dioxide monitor (capnograph); ~~and~~
18. Equipment necessary to establish intravenous or intraosseous access.

C. Required staffing. At a minimum, there shall be a ~~two-person~~ three-person treatment team for moderate sedation. The team shall include the operating dentist ~~and a second, one~~ person to monitor the patient as provided in 18VAC60-21-260 K, and one person to assist the operating dentist as provided in 18VAC60-21-260 J, ~~both all~~ of whom shall be in the operatory with the patient throughout the dental procedure. If ~~the second person is~~ a dentist, an anesthesiologist, or a certified registered nurse anesthetist ~~who~~ administers the drugs as permitted in subsection A of this section, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs to include blood pressure, oxygen saturation, respiratory rate, and heart rate shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.
2. Blood pressure, oxygen saturation, respiratory rate, and end-tidal carbon dioxide, ~~and pulse~~ shall be monitored continually during the administration and recorded ~~every five minutes unless precluded or invalidated by the nature of the patient, procedure, or equipment.~~

3. Monitoring of the patient under moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and ~~circulation~~ blood pressure and heart rate are satisfactory for discharge and vital signs have been taken and recorded.
2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.
3. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.
4. If a separate recovery area is utilized, oxygen and suction equipment shall be immediately available in that area.
5. Since re-sedation may occur once the effects of the reversal agent have waned, the patient shall be monitored for a longer period than usual when a pharmacological reversal agent has been administered before discharge criteria have been met.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

18VAC60-21-300. Requirements for a deep sedation/general anesthesia permit.

A. ~~After March 31, 2013, no~~ No dentist may ~~employ or use provide or administer~~ deep sedation or general anesthesia in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in AAOMS and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. To determine eligibility for a deep sedation/general anesthesia permit, a dentist shall submit the following:

1. A completed application form;

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2. The application fee as specified in 18VAC60-21-40;
3. A copy of the certificate of completion of a CODA accredited program or other documentation of training content which meets the educational and training qualifications specified in subsection C of this section; and
4. A copy of current certification in Advanced Cardiac Life Support for Health Professionals (ACLS) or Pediatric Advanced Life Support for Health Professionals (PALS) as required in subsection C of this section.

C. Educational and training qualifications for a deep sedation/general anesthesia permit.

1. Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or
2. Completion of an CODA accredited residency in any dental specialty that incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e., medical evaluation and management of patients) comparable to those set forth in the ADA's Guidelines for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred; and
3. Current certification in advanced resuscitative techniques with hands-on simulated airway and megacode training for health care providers, including basic electrocardiographic interpretations, such as courses in ACLS or PALS; and
4. Current training in the use and maintenance of the equipment required in 18VAC60-21-301.

18VAC60-21-301. Requirements for administration of deep sedation or general anesthesia.

A. Preoperative requirements. Prior to the appointment for treatment under deep sedation or general anesthesia the patient shall:

1. Be informed about the personnel and procedures used to deliver the sedative or anesthetic drugs to assure informed consent as required by 18VAC60-21-260 F.
2. Have a physical evaluation as required by 18VAC60-21-260 C.
3. Be given preoperative verbal and written instructions including any dietary or medication restrictions.

B. Delegation of administration.

1. A dentist who does not meet the requirements of 18VAC60-21-300 shall only ~~use~~ utilize the services of a

dentist who does meet those requirements or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In a licensed outpatient surgery center, a dentist shall ~~use~~ utilize either a dentist who meets the requirements of 18VAC60-21-300, an anesthesiologist, or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.

2. A dentist who meets the requirements of 18VAC60-21-300 may administer or ~~use~~ utilize the services of the following personnel to administer deep sedation or general anesthesia:

- a. A dentist with the training required by 18VAC60-21-300 C;
- b. An anesthesiologist; or
- c. A certified registered nurse anesthetist under the ~~medical~~ direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-300 C or under the supervision of a doctor of medicine or osteopathic medicine.

3. Preceding the administration of deep sedation or general anesthesia, a dentist who meets the requirements of 18VAC60-21-300 may ~~use~~ utilize the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

- a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or
- b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

C. Equipment requirements. A dentist who administers or utilizes the services of a qualified anesthesia provider to administer deep sedation or general anesthesia shall have available the following equipment in sizes appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;
2. Oral and nasopharyngeal airway management adjuncts;
3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;
4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;
5. Source of delivery of oxygen under controlled positive pressure;
6. Mechanical (hand) respiratory bag;

- 7. ~~Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;~~
- 8. Blood pressure monitoring equipment;
- 9. Appropriate emergency drugs for patient resuscitation;
- 9. ~~10.~~ EKG monitoring equipment;
- 10. ~~11.~~ Temperature measuring devices;
- 11. ~~12.~~ Pharmacologic antagonist agents;
- 12. ~~13.~~ External defibrillator (manual or automatic);
- 13. ~~14.~~ An end-tidal carbon dioxide monitor (capnograph);
- 14. ~~15.~~ Suction apparatus;
- 15. ~~Throat pack~~ 16. Airway protective device; and
- 16. ~~17.~~ Precordial or pretracheal stethoscope; and
- 17. Equipment necessary to establish intravenous or intraosseous access.

D. Required staffing. At a minimum, there shall be a three-person treatment team for deep sedation or general anesthesia. The team shall include the operating dentist, a second person to monitor the patient as provided in 18VAC60-21-260 K, and a third person to assist the operating dentist as provided in 18VAC60-21-260 J, all of whom shall be in the operatory with the patient during the dental procedure. If a second dentist, an anesthesiologist, or a certified registered nurse anesthetist administers the drugs as permitted in subsection B of this section, such person may serve as the second person to monitor the patient.

E. Monitoring requirements.

- 1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include: temperature, blood pressure, pulse, oxygen saturation, EKG, and respiration.
- 2. The patient's vital signs, end-tidal carbon dioxide (unless precluded or invalidated by the nature of the patient, procedure, or equipment), ~~and~~ EKG readings, blood pressure, pulse, oxygen saturation, temperature, and respiratory rate shall be monitored; continually; recorded every five minutes; and reported to the treating dentist throughout the administration of controlled drugs and recovery. When a depolarizing medications are medication or inhalation agent other than nitrous oxide is administered, temperature shall be monitored ~~constantly~~ continuously.
- 3. Monitoring of the patient undergoing deep sedation or general anesthesia is to begin prior to the administration of any drugs and shall take place ~~continuously~~ continually during administration, the dental procedure, and recovery from anesthesia. The person who administers the anesthesia or another licensed practitioner qualified to

administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

F. Emergency management.

- 1. A secured intravenous line must be established and maintained throughout the procedure.
- 2. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

G. Discharge requirements.

- 1. If a separate recovery area is utilized, oxygen and suction equipment shall be immediately available in that area.
- 2. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation blood pressure, and heart rate are satisfactory for discharge and vital signs have been taken assessed and recorded, unless extenuating circumstances exist and are documented in the patient's record.
- 2. ~~3.~~ Since re-sedation may occur once the effects of the reversal agent have waned, the patient shall be monitored for a longer period than usual before discharge if a pharmacological reversal agent has been administered before discharge criteria have been met.
- 4. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number for the dental practice.
- 3. ~~5.~~ The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

VA.R. Doc. No. R18-5513; Filed August 16, 2020, 9:31 a.m.

Proposed Regulation

Title of Regulation: 18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-40).

Statutory Authority: §§ 54.1-2400 and 54.1-2722 of the Code of Virginia.

Public Hearing Information:

October 9, 2020 - 1:15 p.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Boardroom 3, Henrico, VA 23233

Public Comment Deadline: November 13, 2020.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA

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23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system. The specific authority for remote supervision of dental hygienists is found in § 54.1-2722 of the Code of Virginia, which was amended effective July 1, 2019.

Purpose: The purpose of the regulatory action is adoption of the protocols of the Virginia Department of Health (VDH) and the Virginia Department of Behavioral Health and Developmental Services (DBHDS) for remote supervision of dental hygienists employed by those agencies. Greater utilization of dental hygienists will allow dental services to be provided to underserved populations and will improve the health and welfare of those citizens.

Substance: The amended regulation adopts the protocol for dental hygienists employed by DBHDS practicing under remote supervision of a dentist, as prescribed by Chapter 86 of the 2019 Acts of Assembly.

Amendments also correct a Code of Virginia citation and update the protocol for remote supervision of dental hygienists employed by VDH.

Issues: The primary advantage to the public is the inclusion of dental hygienists employed by DBHDS working under the protocol for remote supervision, which will increase access to dental care; there are no disadvantages.

There are no advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to amend 18VAC60-25 Regulations Governing the Practice of Dental Hygiene in order to authorize the remote supervision of dental hygienists employed by the Department of Health (VDH) and by the Department of Behavioral Health and Developmental Services (DBHDS) by dentists employed by VDH and DBHDS, respectively. The proposed amendment would make permanent the existing emergency text and incorporate by reference two documents that lay out the protocols for dental hygienists to practice under remote supervision by dentists for VDH and DBHDS respectively.

Background. Section 54.1-2722 of the Code of Virginia (Code) allows dental hygienists employed by VDH to practice remotely under the supervision of a dentist also employed by VDH.¹ Accordingly, 18VAC60-25-40 Scope of Practice allows licensed dental hygienists to perform services that are "educational, diagnostic, therapeutic, or preventive under the direction and indirect, or general supervision of a licensed dentist."² 18VAC60-25-40 also specifies the tasks

that are not to be delegated to dental hygienists, or can only be delegated under specific conditions, and incorporates by reference a protocol dated September, 2012 for dental hygienists to practice in an expanded capacity under remote supervision by VDH dentists.

Chapter 86 of the 2019 Acts of Assembly expanded this to include dental hygienists and dentists employed by DBHDS.³ In particular, Chapter 86 required VDH and DBHDS to jointly develop protocols for remote supervision in consultation with the Virginia Dental Association and the Virginia Dental Hygienists' Association. This act also amended the Code to state that "such protocols shall be adopted by the Board as regulations" and required that the Board promulgate emergency regulations to implement these changes. The emergency regulation took effect on October 1, 2019, and is scheduled to expire on March 31, 2021.⁴ The emergency text brings dental hygienists and dentists employed by DBHDS under the purview of the regulation and incorporates by reference two separate protocol documents, one replacing the 2012 protocol for VDH and a new one for DBHDS.⁵

It should be noted that the Board chose to adopt the protocols by incorporating the documents by reference rather than including the protocols verbatim in the text of the 18VAC60-25-40. On the one hand, this requires readers of the regulation to find and refer to the protocol documents on the Board of Dentistry website. On the other hand, the remote supervision protocol only applies to dental hygienists employed by VDH and DBHDS, who are likely a small fraction of all licensed dental hygienists. These dental hygienists would likely be informed of the protocol documents directly by the agency that hires them, and all the other dental hygienists are unlikely to be confused by language that does not apply to them in a section of the regulation that is otherwise entirely directed at them.

Estimated Benefits and Costs. The proposed amendments would allow DBHDS to provide a range of educational and preventative dental services to the individuals they serve, including mobile dental care to individuals with developmental disabilities, at a lower cost than they would have incurred if their dental hygienists had to be directly supervised by a dentist. This would likely benefit the populations they serve in addition to decreasing costs to the agency. The proposed amendments are unlikely to increase costs.

Businesses and Other Entities Affected. Businesses would not be affected. The Board reports that it licenses 6,028 dental hygienists in Virginia. However, only the dental hygienists employed by VDH and DBHDS would be affected by the proposed amendments.

Small Businesses⁶ Affected. Small businesses would not be affected.

Localities⁷ Affected.⁸ The proposed amendments are not expected to disproportionately affect particular localities. The proposed amendments are unlikely to introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹See <https://law.lis.virginia.gov/vacode/54.1-2722/>

²See <https://law.lis.virginia.gov/admincode/title18/agency60/chapter25/section40/>

³See <http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0086>

⁴See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8672>

⁵These documents can be found at https://www.dhp.virginia.gov/dentistry/dentistry_laws_regs.htm

⁶Pursuant 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."

⁷"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments (i) adopt the protocols for the remote supervision of dental hygienists employed by the Department of Behavioral Health and Developmental Services (DBHDS) by dentists employed by DBHDS in accordance with Chapter 86 of the 2019 Acts of Assembly and (ii) update the protocols for remote supervision of dental hygienists employed by the Department of Health (VDH) by dentists employed by VDH. The proposed amendments would replace emergency regulations currently in effect.

**Part II
Practice of Dental Hygiene**

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect ~~or~~ general, or remote supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Administration of deep sedation or general anesthesia and moderate sedation;
7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with any sedation or anesthesia administered.
2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.
3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed

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rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;
2. Packing and carving of amalgam restorations;
3. Placing and shaping composite resin restorations with a slow speed handpiece;
4. Taking final impressions;
5. Use of a non-epinephrine retraction cord; and
6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 D E of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the ~~protocol~~ Protocol adopted by the ~~Commissioner~~ Virginia Department of Health (VDH) for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, ~~September 2012~~ May 2019, which is hereby incorporated by reference.

G. A dental hygienist employed by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 E of the Code of Virginia, of a dentist employed by DBHDS and in accordance with the Protocol for Virginia Department of Behavioral Health and Developmental Services (DBHDS) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, May 2019, which is hereby incorporated by reference.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC60-25)

~~Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012~~

[Protocol adopted by Virginia Department of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, Virginia Department of Health \(rev. 5/2019\)](#)

[Protocol for Virginia Department of Behavioral Health and Developmental Services \(DBHDS\) Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by DBHDS Dentists, Virginia Department of Behavioral Health and Developmental Services \(rev. 5/2019\)](#)

VA.R. Doc. No. R20-6044; Filed August 16, 2020, 9:29 a.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (adding 18VAC85-21-21).**

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Public Hearing Information:

October 22, 2020 - 8:35 p.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: November 13, 2020.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The specific statutory authority for electronic prescribing and the authority for granting a waiver are found in § 54.1-3408.02 of the Code of Virginia.

Purpose: The purpose of this regulatory action is compliance with a statutory requirement to promulgate regulations setting out the conditions upon which the board may grant a one-year waiver from the requirement for electronic prescribing of a controlled substance containing an opioid. Since the circumstances may vary from practitioner to practitioner, the board has used the conditions set forth in the Code of Virginia as the basis for the regulation and will take into

consideration the health, safety, and welfare of a practitioner's patients in making a case-by-case decision on a waiver.

Substance: The proposed amendments to 18VAC85-21 add 18VAC85-21-21 to (i) reiterate the requirement that took effect on July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription; and (ii) provide for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship technological limitations, or other exceptional circumstances beyond the practitioner's control.

Issues: There are no advantages or disadvantages to the public apart from those in the statutory language. Submitting opioid prescriptions electronically has been shown to reduce prescription fraud and thereby reduce the volume of opioids available for abuse or misuse. The waiver provision, in addition to the specific exemptions to electronic prescribing, allows for continued prescribing for practitioners who are not able to comply for exceptional circumstances beyond their control.

Department of Planning and Budget's Planning and Budget:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to amend 18VAC85-21 Regulations Governing Prescribing of Opioids and Buprenorphine in order to require that prescriptions of medications containing opioids be transmitted electronically from the prescribing authority to the pharmacist. The proposed amendment would make permanent the existing emergency text and is intended to prevent the abuse of prescription drugs containing opioids.

Background. Section 54.1-3408.02 of the Code of Virginia, as effective until July 1, 2020, states that prescriptions may be transmitted electronically or by facsimile machine and shall be treated as valid original prescriptions.¹ The 2017 Acts of Assembly (Chapters 115 and 429) amended and reenacted this section of the Code to require that "any prescription for a controlled substance that contains an opiate shall be issued as an electronic prescription." The reenacted section containing this requirement takes effect on July 1, 2020.² The same acts also updated the definition of "electronic prescriptions" to be "a written prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file; Schedules II through V prescriptions shall be transmitted in accordance with 21 C.F.R. Part 1300."³

Subsequently, pursuant to a statutory change requested by the Board,⁴ Chapter 664 of the 2019 Acts of Assembly further amended this section to insert ten exemptions to this requirement and to authorize the licensing health regulatory board to grant a hardship waiver for one year.⁵ Chapter 664 also required that the Board of Medicine, the Board of Nursing, the Board of Dentistry, and the Board of Optometry promulgate regulations to implement the waivers within 280 days of the act's enactment. Hence, the Board of Medicine

promulgated an emergency regulation that became effective on September 18, 2019.⁶

The proposed amendment, which is identical to the emergency text currently in effect, adds a section to the regulation (specifically 18VAC85-21-21) containing two subsections as quoted below.

18VAC85-21-21. Electronic prescribing.

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

Thus, the proposed amendment would inform readers as to the electronic transmission requirement and the waiver that may be obtained, but readers would need to refer to § 54.1-3408.02 of the Code to find the exemptions that were added by Chapter 664 of the 2019 Acts of Assembly.

The exemptions provided in the Code would directly affect the potential cost of transmitting electronic prescriptions in a variety of settings. Thus, although they are not explicitly mentioned in the text of the regulation, the exemptions are listed here for the reader's reference, with parenthetical notes inserted for clarity of context.

§ 54.1-3408.02.C. The requirements of subsection B (electronic transmission) shall not apply if:

1. The prescriber dispenses the controlled substance that contains an opioid directly to the patient or the patient's agent;
2. The prescription is for an individual who is residing in a hospital, assisted living facility, nursing home, or residential health care facility or is receiving services from a hospice provider or outpatient dialysis facility;
3. The prescriber experiences temporary technological or electrical failure or other temporary extenuating circumstance that prevents the prescription from being transmitted electronically, provided that the prescriber documents the reason for this exception in the patient's medical record;
4. The prescriber issues a prescription to be dispensed by a pharmacy located on federal property, provided that the prescriber documents the reason for this exception in the patient's medical record;

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5. The prescription is issued by a licensed veterinarian for the treatment of an animal;
6. The FDA requires the prescription to contain elements that are not able to be included in an electronic prescription;
7. The prescription is for an opioid under a research protocol;
8. The prescription is issued in accordance with an executive order of the Governor of a declared emergency;
9. The prescription cannot be issued electronically in a timely manner and the patient's condition is at risk, provided that the prescriber documents the reason for this exception in the patient's medical record; or
10. The prescriber has been issued a waiver pursuant to subsection D (hardship waiver).

Further, Chapter 664 also amends § 54.1-3410 of the Code, effective July 1, 2020, which addresses when pharmacists may sell and dispense drugs. It adds a subsection to clarify that, "A dispenser who receives a non-electronic prescription for a controlled substance containing an opioid is not required to verify that one of the exceptions set forth in § 54.1-3408.02 applies and may dispense such controlled substance pursuant to such prescription and applicable law."

Estimated Benefits and Costs. The 2017 Acts of Assembly (Chapters 115 and 429) also directed the Secretary of Health and Human Resources to convene a workgroup of interested stakeholders to review actions necessary for the implementation of electronic prescriptions for controlled substances and evaluate the burden on prescribers, including the inability of prescribers to comply with the deadline. The E-Prescribing Workgroup's final report indicates that roughly 75% of providers and nearly 99% of pharmacies in Virginia had already adopted electronic prescriptions by 2018 and face no additional costs.⁷

The remaining providers who need to implement e-prescription by July 1, 2020, would face additional costs, particularly those in remote areas without reliable internet connectivity. If this imposes a significant economic burden, these providers could mitigate these costs in the short run by obtaining a waiver from the Board by July 1, 2020, for a period of up to a year.⁸ The remaining one percent of pharmacies would likely find it beneficial to adopt e-prescriptions if they dispense opiates and intend to continue to do so. Finally, the public would stand to benefit to the extent that increasing electronic prescriptions of controlled substances decreases instances of substance abuse.

Businesses and Other Entities Affected. The Board currently has 38,947 licensed doctors of medicine and surgery, 3,834 licensed doctors of osteopathic medicine, 553 licensed doctors of podiatry, and 4,224 licensed physician assistants.

Licensees would only be affected by the new requirements if (i) they prescribe medications containing opioids, (ii) they do not work in a type of facility that is included in the exemptions listed above, and (iii) they do not already use e-prescription technology.

Small Businesses⁹ Affected. The Department of Health Professions could not provide information on the number of licensees who may be proprietors or employees of a small business. However, there do not appear to be disproportionately higher costs for small businesses.

Localities¹⁰ Affected.¹¹ The proposed amendments potentially affect prescribers and patients in all localities. The proposed amendments are unlikely to introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹See <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3408.02/>

²See <http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0429>

³See Definitions effective July 1, 2020: <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3401/>

⁴See [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\(30\)26790/Agenda_DHP_26790_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting(30)26790/Agenda_DHP_26790_v1.pdf) (page 172)

⁵See <http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0664>

⁶See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8714>

⁷<https://rga.lis.virginia.gov/Published/2018/RD416>

⁸In communications with the Department of Health Professions, they stated that providers would need to have their waiver in place by July 1st or they would be in violation of the regulation and the law if they did not e-prescribe opioids after the deadline.

⁹Pursuant 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."

¹⁰"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) require a prescription for a controlled substance that contains an opioid to be issued

as an electronic prescription and (ii) provide a one-time waiver of this requirement for a maximum of one year if a practitioner can demonstrate economic hardship, technological limitations, or other exceptional circumstances beyond the practitioner's control. The proposed amendments would replace emergency regulations currently in effect.

18VAC85-21-21. Electronic prescribing.

A. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia.

B. Upon written request, the board may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R20-6085; Filed August 12, 2020, 2:02 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (amending 18VAC85-160-30 through 18VAC85-160-60; adding 18VAC85-160-51).

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

Effective Date: October 14, 2020.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 1222 of the 2020 Acts of Assembly, the amendments change the regulatory status of surgical assistants from registration to licensure.

CHAPTER 160

REGULATIONS GOVERNING THE ~~REGISTRATION~~ **LICENSURE** OF SURGICAL ASSISTANTS AND **REGISTRATION** OF SURGICAL TECHNOLOGISTS

18VAC85-160-30. Current name and address.

Each licensee or registrant shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee or registrant shall be validly given when sent to the latest address of record provided or served to the licensee or registrant. Any change of name or address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-160-40. Fees.

A. The following fees have been established by the board:

1. The fee for ~~registration licensure~~ as a surgical assistant or ~~registration~~ as a surgical technologist shall be \$75.
2. The fee for renewal of ~~licensure or~~ registration shall be \$70. Renewals shall be due in the birth month of the ~~licensee or~~ registrant in each even-numbered year. For 2020, the renewal fee shall be \$54.
3. The additional fee for processing a late renewal application within one renewal cycle shall be \$25.
4. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.

B. Unless otherwise provided, fees established by the board are not refundable.

18VAC85-160-50. Requirements for ~~registration~~ licensure as a surgical assistant.

A. An applicant for ~~registration~~ licensure shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for ~~registration~~ licensure as a surgical assistant shall provide evidence of:

1. A current credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, ~~the National Surgical Assistant Association~~, or the National Commission for Certification of Surgical Assistants or their successors;
2. Successful completion of a surgical assistant training program during the applicant's service as a member of any branch of the armed forces of the United States; or
3. Practice as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2014, ~~provided the applicant registers with the board by July 1, 2015 2020.~~

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~~C. An applicant for registration as a surgical technologist shall provide evidence of:~~

- ~~1. A current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor;~~
- ~~2. Successful completion of a surgical technologist training program during the applicant's service as a member of any branch of the armed forces of the United States; or~~
- ~~3. Practice as a surgical technologist at any time in the six months prior to July 1, 2014, provided the applicant registers with the board by July 1, 2015.~~

18VAC85-160-51. Requirements for registration as a surgical technologist.

A. An applicant for registration as a surgical technologist shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for registration as a surgical technologist shall provide evidence of:

1. A current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; or
2. Successful completion of a surgical technologist training program during the applicant's service as a member of any branch of the armed forces of the United States.

18VAC85-160-60. Renewal of registration licensure for a surgical assistant.

A surgical assistant who was ~~registered~~ licensed based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, ~~the National Surgical Assistant Association,~~ or the National Commission for the Certification of Surgical Assistants or their successors shall attest that the credential is current at the time of renewal.

VA.R. Doc. No. R21-6112; Filed August 24, 2020, 8:08 a.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: 18VAC90-26. Regulations for Nurse Aide Education Programs (amending 18VAC90-26-10 through 18VAC90-26-70; adding 18VAC90-26-80, 18VAC90-26-90).

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

Public Hearing Information:

October 14, 2020 - 11:30 a.m. - WebEx - The hearing will be conducted during an electronic board meeting. The link and instructions to join the meeting will be on

the agenda on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system. The specific statutory authority for approval of nurse aide education programs is found in § 54.1-3005 of the Code of Virginia.

Purpose: Certified nurse aides often provide care to the most vulnerable of our citizens in long-term care, home health, and other health care settings. The workgroup convened in 2016 to review and standardize curriculum found that persons who train nurse aides need to be better trained themselves, that additional topics need to be taught in the educational programs, and that students need a sufficient number of hours of clinical training to be prepared to pass the examination and practice safely. Amendments are recommended to improve the training of nurse aides so they can be competent in their skills and knowledge to protect the health and safety of patients in their care.

Substance: As a result of periodic review of 18VAC90-26, the board adopted amendments to clarify and update regulations for approval of nurse aide education programs. Substantive changes include: (i) a requirement that all clinical sites must be within 50 miles of the educational program or have board approval (current policy of the board); (ii) a requirement for the certificate of completion to include specific information on the name of the program, the approval number from the board, and the signature of the primary instructor or program coordinator; (iii) a requirement for the primary instructor that states that while onsite to instruct students, that person cannot assume other duties within the school (such as serving as the school nurse and teaching the certified nurse aide course simultaneously); (iv) a requirement for nurse aide education programs to follow the board-approved curriculum with the addition of training in mental health and substance abuse; (v) a refresher course every three years for instructors to remain qualified to teach the nurse aide curriculum; (vi) a change in the length of program to add 20 hours, from 120 to 140, with 20 hours specifically designated for skills acquisition; and (vii) two new sections, 18VAC90-26-80 and 18VAC90-26-90, to move the provision of 18VAC90-25-130 and 18VAC90-25-140 (advanced nurse aide education programs) to 18VAC90-26 so that all regulatory requirements for nurse aide education are included in one chapter.

Issues: The primary advantage of the regulatory changes is greater competency among certified nurse aides who have challenges in working with a vulnerable population of patients. There could also be an advantage to nurse aide students if instructors are better trained and more knowledgeable and there is more time in the curriculum for developing clinical skills, which together might improve their opportunity to pass the required examination. The disadvantage of the regulatory changes may be an increase in the number of hours, which may necessitate a modest increase in staff in some situations.

There are no advantages or disadvantages to the agency or the Commonwealth.

	Community Colleges	High Schools	Proprietary Schools	Nursing Homes/Hospitals	Total
140 hours or more	30	68	29	17	144 (63%)
Between 120 and 140 hours	8	5	31	8	52 (23%)
120 hours	6	4	12	9	31 (14%)
Total	44	77	72	34	227

The data indicate that 144 programs (63%) out of 227 already meet the proposed minimum program length and would not likely be affected from this change. Programs with fewer than 140 hours would face additional costs in terms of instructional or support personnel needing to be paid for the additional hours of work, and any other costs that may arise from additional hours. DHP believes that there are 500-600 instructors statewide. The students in those programs would also have to allocate more of their time toward completing training and may have a delayed graduation date. These anticipated impacts would be proportional to the number of hours needed to reach the 140 hours for the 52 (23%) programs that currently provide between 120 and 140 hours (the hours needed for this group may vary from 1-20 hours, depending on the program). The remaining 31 (14%) programs would face the full additional cost as they are meeting only the minimum hours currently required.

Between the different types of programs, proprietary schools appear to be the ones that would need to expend relatively more than others; 31 programs would have to increase their hours by a portion (1-19 hours) and 12 would have increase their hours by 20. This particular change has a delayed effective date; affected programs would have two years to adjust schedules and plan for the personnel and other costs once the change becomes final. It is more than likely that the programs would pass at least a portion of these additional costs to their students, leading to an increase in tuition. The expected benefit is having more nurse aides pass the competency examination and becoming more qualified in their skills.

Department of Planning and Budget's Economic Impact Analysis:

A change in the minimum length of program to add 20 hours, an increase from 120 to 140 hours, with 20 hours specifically designated for skills acquisition is also being proposed. The nurse aide programs are offered by community colleges, high schools, proprietary (for profit) schools, and nursing homes/hospitals. The data provided by DHP on the number of programs with their current hours is presented in the table below by type of program.

The workgroup found out that trainers at high schools often were assuming other duties (such as serving as the school nurse) concurrently while on site to instruct students. The Board proposes to prohibit simultaneously assuming other duties within the school. This amendment may necessitate scheduling changes to make sure trainers can focus undistracted entirely on training, or if the scheduling could not address the conflict hiring of additional personnel to handle those other duties.

Additionally, the Board proposes a requirement for the certificate of completion to include specific information on the name of the program, the approval number from the Board, and the signature of the primary instructor or program coordinator as well as a requirement that all clinical sites must be within 50 miles of the educational program or have Board approval (current policy of the Board). DHP has indicated that some of the programs, especially those owned by individuals, do not issue a certificate of completion to their graduates. The fifth change is intended to address that deficiency. The sixth change is to prevent programs imposing unreasonable burdens on their students if the clinical site is too far away. However, the proposal allows programs to obtain a waiver in cases where there is no clinical site within the 50-mile radius.

Overall, the Board believes the benefits of more specific training for instructors and more hours in skills acquisition would result in an increase in passage rates on the skills portion of the national competency examination. In turn, the Board believes this will increase the number of CNAs, and the quality of the training they receive, which will respond to

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the growing needs of the Commonwealth and its most vulnerable members. There would also be a benefit to nurse aide students if their instructors are better trained and more knowledgeable, and the curriculum has additional time devoted to developing clinical skills, which would in turn improve their chances of passing the certification exam. The expected costs include an increase in the number of hours which would likely necessitate changes in scheduling, an increase in the staff time needed to ensure an ongoing program operation, an increase in the time needed for CNAs to complete the program, a possible delay in graduation, and a likely tuition increase.

Businesses and Other Entities Affected. The proposed amendments apply to nurse aide programs currently offered by 44 community colleges, 77 high schools, 72 proprietary (for profit) schools, and 34 nursing homes/hospitals. 144 programs already meet the most significant proposed change, an increase from 120 to 140 training hours; accordingly, they and their students would likely be the least affected. 52 programs would have to increase their hours by less than 20 and they and their students would be more affected. 31 programs would have to increase their training hours by 20 hours and their students would likely be the most affected. To the extent programs cannot pass all of the additional compliance costs to their students, an adverse impact would be indicated for them. Similarly, an adverse impact would be indicated for students to the extent the costs of compliance (e.g., additional time to complete training, delays in graduation, increase in tuition) exceed the benefits to them (e.g., higher exam pass rates).

Similarly, train-the-trainer programs (indirectly) and the trainers themselves would be affected as there would be a minimum 12 hours of initial coursework and a required refresher course every three years. The Board indicates train-the-trainer programs are available in the marketplace and there are 500-600 trainers.

Additionally, high schools and community colleges generally receive state and local funding. Therefore, there may be some fiscal impact on the state and/or local governments depending on the particular effect on the programs in a given locality.

Small Businesses² Affected:

Types and Estimated Number of Small Businesses Affected. DHP has no information on which programs are small businesses. However, it is probable that at least some of the proprietary schools and some of the train-the-trainer programs would fall under the small business category.

Costs and Other Effects. The proposed amendments would increase compliance costs for small proprietary schools. Some programs would need to increase the length of their training by up to 20 hours. An adverse economic impact³ on small affected programs is indicated to the extent they cannot pass a portion of their costs to the students because there do

not appear to be any offsetting direct benefits to these small businesses. Similarly, some of the train-the-trainer programs are believed to offer shorter than proposed 12 hour initial trainer coursework and may have to make scheduling changes or add more staff. To the extent increased costs to them are not passed on to the trainers, an adverse impact would be indicated.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact on proprietary and train-the-trainer programs and meet the intended policy goals.

Localities⁴ Affected.⁵ The proposed amendments potentially affect programs in all 132 localities. The increased costs on high schools may have fiscal implications for the locality they are in. Accordingly, some local funds may be required. Consequently, an adverse economic impact⁶ on localities would be indicated to the extent affected high school programs necessitate additional local funding because there do not appear to be any offsetting direct benefits to these local governments.

Projected Impact on Employment. The proposed amendments would increase the demand for trainers and/or program support staff, but also may reduce supply of nurse aides as they would be spending more time in classroom and may choose to work fewer hours during the duration of their training. The net impact on total employment is not clear.

Effects on the Use and Value of Private Property. The additional compliance costs placed on programs would have a negative impact on the asset values of 72 private proprietary schools and 34 nursing homes/hospitals to the extent they cannot pass a portion of the costs to their students. Consequently, the asset value of some these firms may be reduced. The proposed amendments do not affect real estate development costs.

¹<https://townhall.virginia.gov/ViewPReview.cfm?PRid=1636>

²Pursuant 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."

³Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁴"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁵§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁶Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget.

Summary:

As a result of periodic review of 18VAC90-26, the proposed amendments clarify and update the regulation for approval of nurse aide education programs, including (i) requiring instructors to have minimum of 12 hours of coursework and to take a refresher course every three years, (ii) requiring nurse aide education programs to follow the board-approved curriculum with the addition of training in mental health and substance abuse, (iii) increasing the length of program to 140 hours, (iv) prohibiting the primary instructors at schools from assuming other duties within the school while onsite to instruct students, (v) requiring the certificate of completion to include specific information, and (vi) requiring that all clinical sites must be within 50 miles of the educational program or have board approval.

18VAC90-26-10. Definitions.

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

"Approval" means the process by which the board evaluates and grants official recognition to a nurse aide education program.

"Board" means the Virginia Board of Nursing.

"Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.

"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § 2.2-4019 of the Code of Virginia.

"Conditional approval" means the time-limited status that results when a board-approved nurse aide education program has failed to maintain requirements as set forth in this chapter.

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity that conducts a board-approved nurse aide education program.

"Site visit" means a focused onsite review of the nurse aide education program by board staff for the purpose of evaluating program components, such as the physical location (skills lab, classrooms, learning resources) for obtaining program approval, change of location, or verification of noncompliance with this chapter or in response to a complaint.

"Survey visit" means a comprehensive onsite review of the nurse aide education program by board staff for the purpose of granting continued program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with administration, instructional personnel, and students will occur on an as-needed basis.

18VAC90-26-20. Establishing and maintaining a nurse aide education program.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit ~~an~~ a complete application to the board at least 90 days in advance of the expected opening date.
2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.
3. ~~Initial approval~~ Approval may be granted when all documentation of the program's compliance with requirements as set forth in subsection B of this section has been submitted and deemed satisfactory to the board and a site visit has been conducted. Advertisement of the program is authorized only after board approval has been granted.
4. If approval is denied, the program may request, within 30 days of the mailing of the decision, an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.
5. If denial is recommended following an informal conference, which is accepted by the board or a panel thereof, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.
6. If the decision of the board or a panel thereof following a formal hearing is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of

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the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

a. Curriculum content ~~and length~~ as approved by the board and as set forth in subsection A of 18VAC90-26-40 and subsection C of 18VAC90-26-50.

b. Maintenance of qualified instructional personnel as set forth in 18VAC90-26-30.

c. Classroom facilities that meet requirements set forth in subsection D of 18VAC90-26-50.

d. Maintenance of records as set forth in subsection A of 18VAC90-26-50.

e. Skills training experience in a nursing facility that has not been subject to penalty ~~or penalties~~ as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation and Paid Feeding Assistants, October 1, 2013 edition) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law. The use of a nursing facility in Virginia located 50 miles or more from the school shall require board approval.

f. Agreement that board representatives may make unannounced site visits to the program.

g. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.

h. Completion and submission of biennial ~~onsite~~ survey visit review reports and program evaluation reports as requested by the board within a timeframe specified by the board.

2. Impose no fee for any portion of the program on any nurse aide student who, on the date on which the ~~nurse aide student~~ student begins the program, is either employed or has an offer of employment from a nursing facility.

3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes that pose a barrier to such employment.

4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include, ~~but not be limited to,~~ a change in the program coordinator, primary instructor, program ownership,

physical location of the program, or licensure status of the clinical facility.

5. Provide each student with a copy of his certificate of completion as specified in 18VAVC90-26-50.

18VAC90-26-30. Requirements for instructional personnel.

A. Program coordinator.

1. Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.

2. The program coordinator ~~in a nursing facility-based program may be the director of nursing services. The director of nursing services may~~ shall assume the administrative responsibility and accountability for the nurse aide education program ~~but shall not engage in the actual classroom and clinical teaching.~~

3. The primary instructor may be the program coordinator in any nurse aide education program.

4. The director of nursing services in a nursing facility-based program may serve as the program coordinator but shall not simultaneously engage in the actual classroom, skills laboratory, or clinical teaching while serving as the director of nursing services.

B. Primary instructor.

1. Qualifications. Each program shall have a primary instructor who does the majority of the actual teaching of the students and who shall:

a. Hold a current, unrestricted Virginia license or a multistate licensure privilege as a registered nurse ~~who holds a current, unrestricted license in Virginia or a multistate licensure privilege;~~ and

b. Have two years of experience as a registered nurse within the previous five years and at least one year of direct client care or supervisory experience in the provision of geriatric long-term care ~~facility~~ services. ~~Such~~ Other experience may include, ~~but not be limited to,~~ employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting. ~~Experience should include varied responsibilities, such as direct client care, supervision, and education.~~

2. Responsibilities. The primary instructor is responsible for the teaching and evaluation of students and, ~~in addition,~~ shall not assume other duties while instructing or supervising students. The primary instructor shall:

a. Participate in the planning of each learning experience;

b. Ensure that course objectives are ~~accomplished~~ met;

- c. Ensure that the provisions of subsection F of this section are maintained;
- d. Maintain records as required by subsection A of 18VAC90-26-50;
- e. Perform other activities necessary to comply with subsection B of 18VAC90-26-20; and
- f. Ensure that students do not perform services for which they have not received instruction and been found proficient ~~by the instructor~~.

C. Other instructional personnel.

1. Instructional personnel who assist the primary instructor in providing classroom or clinical supervision shall be registered nurses or licensed practical nurses.

- a. A registered nurse shall:
 - (1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a registered nurse; and
 - (2) Have had at least one year of direct patient client geriatric long-term care experience as a registered nurse.
- b. A licensed practical nurse shall:
 - (1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a practical nurse; and
 - (2) ~~Hold a high school diploma or equivalent;~~
 - (3) ~~Have been graduated from a state-approved practical nursing program; and~~
 - (4) Have had at least two years of direct patient client geriatric long-term care experience as a licensed practical nurse.

2. Responsibilities. Other instructional personnel shall provide instruction under the supervision of the primary instructor.

D. Prior to being assigned to teach ~~the~~ in a nurse aide education program, all instructional personnel shall demonstrate competence to teach adults or high school students by one of the following:

- 1. Satisfactory completion of ~~a course in teaching adults at least 12 hours of coursework~~ that includes:
 - a. Basic principles of adult learning;
 - b. Teaching methods and tools for adult learners; ~~and~~
 - c. Evaluation strategies and measurement tools for assessing ~~the~~ student learning outcomes;
 - d. Review of current regulations for nurse aide education programs;
 - e. Review of the board-approved nurse aide curriculum content; and

f. Review of the skills evaluated on the board-approved nurse aide certification examination; or

2. Have ~~experience in teaching adults or high school students;~~

a. Experience in teaching the curriculum content and skills evaluated on the board-approved nurse aide certification examination to adults or high school students; and

b. Knowledge of current regulations for nurse aides and nurse aide education programs.

E. In order to remain qualified to teach the nurse aide curriculum, instructional personnel shall complete a refresher course every three years that includes a review of regulations for nurse aides and nurse aide education programs and the skills evaluated on the board-approved nurse aide certification examination.

E. To meet planned program objectives, the program may, under the direct, onsite supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.

~~F. G.~~ G. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor in all clinical areas, including the skills laboratory.

18VAC90-26-40. Requirements for the curriculum.

A. Curriculum content. The curriculum shall include, ~~but shall not be limited to,~~ classroom, skills laboratory, and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact with a ~~nursing facility~~ client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas:

- a. Communication and interpersonal skills.
- b. Infection control.
- c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.
- d. Promoting client independence.
- e. Respecting clients' rights.

2. Basic skills.

- a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.
- b. Measuring and recording routine vital signs.
- c. Measuring and recording height and weight.
- d. Caring for the client's environment.

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- e. Measuring and recording fluid and food intake and output.
 - f. Performing basic emergency measures.
 - g. Caring for a client when death is imminent.
3. Personal care skills.
- a. Bathing and oral hygiene.
 - b. Grooming.
 - c. Dressing.
 - d. Toileting.
 - e. Assisting with eating and hydration, including proper feeding techniques.
 - f. Caring for skin, to include prevention of pressure ulcers.
 - g. Transfer, positioning, and turning.
4. Individual client's needs, including mental health and social service needs.
- a. Modifying the nurse aide's behavior in response to the behavior of clients.
 - b. Identifying developmental tasks associated with the aging process.
 - c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.
 - d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.
 - e. Utilizing the client's family or concerned others as a source of emotional support.
 - f. Responding appropriately to the client's behavior including, ~~but not limited to~~, aggressive behavior and language.
 - g. Providing appropriate clinical care to the aged and disabled.
 - h. Providing culturally sensitive care.
5. Care of the cognitively or sensory (visual and auditory) impaired client.
- a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).
 - b. Communicating with cognitively or sensory impaired clients.
 - c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.
 - d. Using methods to reduce the effects of cognitive impairment.
6. Skills for basic restorative services.
- a. Using assistive devices in transferring, ambulation, eating, and dressing.
 - b. Maintaining range of motion.
 - c. Turning and positioning, both in bed and chair.
 - d. Bowel and bladder training.
 - e. Caring for and using prosthetic and orthotic devices.
 - f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.
7. Clients' rights.
- a. Providing privacy and maintaining confidentiality.
 - b. Promoting the client's right to make personal choices to accommodate individual needs.
 - c. Giving assistance in resolving grievances and disputes.
 - d. Providing assistance necessary to participate in client and family groups and other activities.
 - e. Maintaining care and security of the client's personal possessions.
 - f. Promoting the client's rights to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate staff.
 - g. Avoiding the need for restraints in accordance with current professional standards.
8. Legal and regulatory aspects of practice as a certified nurse aide including, ~~but not limited to~~, consequences of abuse, neglect, misappropriation of client property, and unprofessional conduct as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-25-100.
9. Occupational health and safety measures.
10. Appropriate management of conflict.
11. Observational and reporting techniques.
12. Substance abuse and opioid misuse.
- B. Unit objectives.
- 1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.
 - 2. Objectives shall be reviewed with the students at the beginning of each unit.

~~C. Curriculum changes. Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the onsite visit or with the report submitted by the program coordinator in the intervening year.~~

18VAC90-26-50. Other program requirements.

A. Records.

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall provide each nurse aide with a copy of this record and a certificate of completion from the program, which includes the name of the program, the board approval number, date of program completion, and the signature of the primary instructor or program coordinator.

2. A record of the ~~reports of graduates' performance on the approved competency evaluation program~~ state-approved nurse aide certification examination (the National Nurse Aide Assessment Program or NNAAP) shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

B. Student identification. The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student." Name identification on a badge shall follow the policy of the facility in which the nurse aide student is practicing clinical skills.

C. Length of program.

1. ~~The~~ By (insert a the date two years from effective date of the regulation), the program shall be at least 120 140 clock hours in length, at least 20 hours of which shall be specifically designated for skills acquisition in the laboratory setting.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a ~~nursing facility~~ client.

3. ~~Skills~~ Clinical training in clinical settings shall be at least 40 hours of providing direct client care. Five of the clinical hours may be in a setting other than ~~a nursing home~~ a geriatric long-term care facility. Hours of observation shall not be included in the required 40 hours of skills training.

4. ~~Employment~~ Time spent in employment orientation to facilities used in the education program must not be included in the ~~120~~ 140 hours allotted for the program.

D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. ~~Instructional~~ Current instructional technology and equipment needed for simulating client care.

6. Equipment and supplies sufficient for the size of the student cohort.

18VAC90-26-60. Requirements for continued approval.

A. Program review.

1. Each nurse aide education program shall be reviewed annually either by a survey visit ~~on-site~~ by an agent of the board or by a written program evaluation. Each program shall be reviewed by ~~an onsite~~ a survey visit at least every two years following initial review or by a site visit whenever deemed necessary by the board to ensure continued compliance.

2. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that ~~an onsite review~~ a survey visit is not conducted.

3. Any additional information needed to evaluate a program's compliance with regulations of the board must be submitted within a timeframe specified by the board.

B. ~~Decision on continued~~ Continued, conditional, or withdrawal of approval.

1. The board shall receive and review the report of the ~~onsite~~ survey visit or program evaluation report and may grant continued approval, place a program on conditional approval, or ~~deny continued~~ withdraw approval.

a. Granting continued approval. A nurse aide education program shall continue to be approved provided the requirements set forth in subsection B of 18VAC90-26-20 are maintained.

b. Placing a program on conditional approval. If the board determines that a nurse aide education program (i) has not filed its biennial survey visit or program evaluation report; (ii) is unresponsive or uncooperative in the scheduling of the survey or site visit; or (iii) is not maintaining the requirements of subsection B of 18VAC90-26-20, as evidenced by the ~~onsite~~ survey visit or program evaluation report, the board may place the program on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies. Within 30 days of the mailing of a decision on conditional approval, The the program may request, ~~within 30 days of the mailing of a decision on conditional approval,~~ an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.

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(1) The board shall receive and review reports of progress toward correcting identified deficiencies. When a final report is received at the end of the specified time showing corrections of deficiencies, the board may grant continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the board, a ~~committee the board~~ may ~~recommend withdrawing approval following an informal conference held in accordance with § 2.2-4019 of the Code of Virginia~~ withdraw approval.

c. Withdrawing approval.

~~(3) If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.~~

(1) If the board determines that a nurse aide education program is not maintaining the requirements of subsection B of 18VAC90-26-20, an informal conference will be convened in accordance with § 2.2-4019 of the Code of Virginia. If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.

~~(4) (2) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional withdrawal of approval.~~

~~e. Denying continued approval. If the board determines that a nurse aide education program is not maintaining the requirements of subsection B of 18VAC90-26-20, an informal conference will be convened in accordance with § 2.2-4019 of the Code of Virginia. If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.~~

2. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

18VAC90-26-70. Interruption or closing of a program.

A. Interruption of program.

1. When a program provider does not hold classes for a period of one year, the program shall be placed on inactive

status and shall not be subject to compliance with subsection B of 18VAC90-26-20 ~~for the specified time.~~

~~2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the inactive period and be subject to the requirements of subsection B of this section. At any time during the year after the program is placed on inactive status, the program provider may request that the board return the program to active status by providing a list of the admitted student cohort and start date.~~

3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection B of this section. In the event that a program desires to reopen after closure, submission of a new program approval application shall be required.

B. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

18VAC90-26-80. Requirements for an approved advanced certification education program.

A. The advanced certification education program shall be approved by the Virginia Board of Nursing. An approved advanced certification education program shall also be an approved nurse aide education program as set forth in 18VAC90-26-20.

B. An advanced certification education program shall consist of a minimum of 140 hours, at least 20 hours of which shall be specifically designated for skills acquisition in the laboratory setting. There shall also be a minimum of 40 hours of clinical skills instruction in direct client care with onsite supervision by instructional personnel. When nurse aides are engaged in direct client care in the course of advanced certification training, the ratio shall not exceed 10 students to one instructor.

C. The instructional personnel in an approved advanced certification education program shall meet the requirements as set forth in 18VAC90-26-30.

D. The curricula of an approved advanced certification education program shall, at a minimum, meet the requirements of 18VAC90-26-40.

E. Each advanced certification program shall develop an individual record of major skills taught and the date of performance by the student. At the completion of the program, the program shall provide each nurse aide with a copy of this record and a certificate of completion, as specified in 18VAC90-26-50 A.

F. An advanced certification education program shall develop and submit to the board a competency evaluation based on the curriculum content required in 18VAC90-26-40. Such an evaluation shall include both a written test on the curriculum and an assessment of manual skills. A record of the reports of each graduate's performance on the nurse aide certification examination (the National Nurse Aide Assessment Program or NNAAP) shall be maintained for a minimum of three years.

G. Program review shall be in accordance with requirements of 18VAC90-26-60 and shall be conducted concurrently with the onsite review of the basic nurse aide education program. Loss of board approval for the basic nurse aide education program shall automatically result in the loss of approval for the advanced certification education program.

H. When an advanced certification education program closes, the program provider shall comply with 18VAC90-26-70 B.

18VAC90-26-90. Required curriculum content for an advanced certification education program.

A. In addition to the curriculum content specified in 18VAC90-26-40, an advanced certification education program shall include classroom, skills laboratory, and clinical instruction in the following curriculum:

1. Leadership and mentoring skills.
 - a. Principles of adult learning;
 - b. Learning styles;
 - c. Evaluation methods to assess learner knowledge;
 - d. Communication techniques and communication barriers; emphasizing cultural diversity of coworkers and clients;
 - e. Conflict management;
 - f. Precepting and mentoring new certified nurse aides;
 - g. Teamwork;
 - h. Contributing to care plan development and implementation;
 - i. Organizational responsibilities; and
 - j. Principles of documentation.
2. Care of the cognitively impaired client.
 - a. Signs and symptoms of dementia;
 - b. Concepts and techniques for addressing the unique needs and behaviors of individuals with dementia, including agitation, combativeness, sundown syndrome, wandering, and forgetfulness;

c. Basic concepts of communication with cognitively impaired clients, including techniques to reduce the effects of cognitive impairment;

d. Basic concepts of behavior management with cognitively impaired clients; and

e. Recognizing changes in the client's condition and reporting and documenting such changes.

3. Restorative care.

a. Anatomy and physiology with emphasis on the effects of aging;

b. Pathophysiology of common disorders of the elderly;

c. Measures to assist clients with common medical problems;

d. Recognizing changes in the client's condition and reporting and documenting such changes;

e. Concepts to maintain or improve client mobility and ability to perform activities of daily living; and

f. Rehabilitation procedures.

4. Wound care.

a. Prevention, identification and treatment of Stage I and Stage II pressure ulcers;

b. Positioning;

c. Sterile and clean technique;

d. Dressing changes;

e. Concepts of hydration;

f. Nutrition and weight loss; and

g. Recognizing changes in the client's condition and reporting and documenting such changes.

B. Written objectives for each unit of instruction shall be stated in behavioral terms that are measurable and shall be reviewed with the students at the beginning of each unit.

VA.R. Doc. No. R19-5969; Filed August 19, 2020, 8:36 a.m.

BOARD OF OPTOMETRY

Fast-Track Regulation

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-20, 18VAC105-20-40; repealing 18VAC105-20-50).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 14, 2020.

Effective Date: October 29, 2020.

Regulations

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the regulatory change is to eliminate requirements and fees that are not necessary for public protection. The board found that current law and regulations protect consumer interest and protect the health, safety, and welfare of the public.

Rationale for Using Fast-Track Rulemaking Process: The impetus for this regulatory action is the recommendation of a subcommittee appointed by the board to study the use of professional designations. In its review of law and regulation, the subcommittee found no statutory requirement for registration of such designations and no necessity in terms of consumer protection for such registration. Since the amendments will eliminate a restriction and regulatory burden on optometrists, it is not expected to be controversial.

Substance: The amendments repeal 18VAC105-20-50, which establishes the requirements for issuance and usage of a professional designation and change 18VAC105-20-20, relating to professional designations, and 18VAC105-20-40, relating to unprofessional conduct for practicing in a location with an unregistered professional designation, for consistency with the repealed section.

Issues: There are no primary advantages or disadvantages to the public. The public is adequately protected by current laws and regulations for disclosures, posting, and recordkeeping without registration of professional designations.

There are no advantages or disadvantages to the agency or the Commonwealth. Eliminating an administrative function of registering professional designations is advantageous, but it is a very small component of the board's work.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Optometry (Board) proposes to amend 18VAC105-20 Regulations of the Virginia Board of Optometry in order to repeal the requirement to register a professional designation and remove the associated registration fees and penalties for failing to meet that requirement.

Background. Under the Board's current regulation, all licensed optometrists who practice at an office under a professional designation, as opposed to practicing under the legal name of the optometrist, are required to register the professional designation with the Board and pay fees to maintain the registration. For example, if an optometrist

named John Smith practiced under the professional designation of "Eye Care Optometry," as opposed to practicing as "John Smith, Doctor of Optometry," then he would have to register "Eye Care Optometry" with the Board as a professional designation and renew the registration every year.¹ The proposed amendment would remove all of the Board's requirements associated with professional designation.

The professional designation requirements currently in place were promulgated as a precaution against false advertising. Section 54.1-3204 of the Code of Virginia deems it illegal for anyone to "publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists."² Section 54.1-3215 of the Code authorizes the Board to revoke or suspend a license or reprimand the licensee for "advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations."³ However, the Code does not define or make any mention of professional designations.

The Department of Health Professions (DHP) reported that these requirements were adopted so that licensees would not operate under a name that could be construed by the public as belonging to a medical facility. Based on a review of the Code and other regulations conducted by a committee appointed by the Board, they now seek to repeal this requirement. Specifically, the committee found that the regulations were unnecessary and that similar Boards, such as Dentistry, did not require the same of their licensees.⁴

Estimated Benefits and Costs. The proposed amendments would eliminate the professional amendment application fee, which is currently \$100. The annual professional designation renewal fee (\$50) and the corresponding late renewal fee (\$20) would also be eliminated. Further the Board proposes to remove "practicing with an expired or unregistered professional designation" from the list of violations for which license-holders could be penalized. Thus, the proposed amendments would benefit optometrists operating under a professional designation. Removal of these requirements does not appear to introduce risk to the public or other costs. Optometrists could still use a professional designation, but such use would now be optional and no registration or fees would be required. Although the Board would lose about \$14,050 in annual revenue, the Board is projected to conclude this biennium with a surplus of \$269,361 and reports it is thus able to absorb this loss.

Businesses and Other Entities Affected. The Board directly regulates optometrists, but not the businesses or other entities where they work. The proposed amendments affect at least the 263 optometrists with professional designations currently registered with the Board. No costs are introduced.

Small Businesses⁵ Affected. As stated, the Board directly regulates optometrists, but not the businesses or other entities where they work. Virginia Employment Commission data indicates that all 490 offices of optometrists in the Commonwealth qualify as small businesses. Hence, most or all of the affected 263 optometrists with professional designations likely work at small businesses. DHP does not have any information indicating which optometrists work at a small business.

Localities⁶ Affected.⁷ The proposed amendments do not introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹The regulation also requires that the names of all optometrists providing practicing at that location be displayed.

²<https://law.lis.virginia.gov/vacode/title54.1/chapter32/section54.1-3204/>; see point 6.

³<https://law.lis.virginia.gov/vacode/title54.1/chapter32/section54.1-3215/>; see point 9.

⁴Explanation provided by DHP; see also https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\29\29698\Minutes_DHP_29698_v2.pdf

⁵Pursuant 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."

⁶"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments repeal the requirement to register a professional designation and remove the associated registration fees and penalties for failing to meet that requirement.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$250
Annual licensure renewal without TPA certification	\$150

Annual licensure renewal with TPA certification	\$200
Annual renewal of inactive license	\$100
Late renewal without TPA certification	\$50
Late renewal with TPA certification	\$65
Late renewal of inactive license	\$35
Handling fee for returned check or dishonored credit card or debit card	\$50
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	\$75
Annual licensure renewal with TPA certification	\$100
Annual professional designation renewal (per location)	\$25

18VAC105-20-40. Standards of conduct.

The board has the authority to refuse to issue or renew a license, suspend, revoke, or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. Notify the board of any disciplinary action taken by a regulatory body in another jurisdiction.
3. Post in an area of the optometric office that is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.

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4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination, or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.

5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.

6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.

7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing, or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving

treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

~~13. Not practice with an expired or unregistered professional designation.~~

~~14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.~~

18VAC105-20-50. Professional designations. (Repealed.)

~~A. In addition to the name of the optometrist as it appears on the license, an optometrist may practice in an office that uses only one of the following:~~

~~1. The name of an optometrist who employs him and practices in the same office;~~

~~2. A partnership name composed of some or all names of optometrists practicing in the same office; or~~

~~3. A professional designation, if the conditions set forth in subsection B of this section are fulfilled.~~

~~B. Optometrists licensed in this Commonwealth who practice as individuals, partnerships, associations, or other group practices may use a professional designation for the optometric office in which they conduct their practices provided the following conditions are met:~~

~~1. A professional designation shall be registered with the board by a licensed optometrist who has an ownership or equity interest in the optometric practice and who must practice in any location with that registered designation and who shall assume responsibility for compliance with this section and with the statutes and regulations governing the practice of optometry.~~

~~2. A professional designation shall be approved by the board and a fee shall be paid as prescribed by board regulations prior to use of the name. Names which, in the judgment of the board, are false, misleading, or deceptive will be prohibited.~~

~~3. No licensed optometrist may, at any time, register to practice optometry under more than one professional designation.~~

~~4. All advertisements, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or reasonably recognizable derivatives thereof unless the name of the optometrist is used with the~~

~~professional designation with the O.D. designation, Doctor of Optometry or optometrist.~~

~~5. In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed.~~

~~6. The names of all optometrists who practice under the professional designation shall be maintained in the records of the optometric office for five years following their departure from the practice.~~

~~7. The name of the licensed optometrist providing care shall appear on all statements of charges and receipts given to patients.~~

~~8. An optometrist may use a professional designation which contains the name of an inactive, retired, removed, or deceased optometrist for a period of no more than one year from the date of succession to a practice and so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."~~

VA.R. Doc. No. R21-6205; Filed August 16, 2020, 9:57 a.m.

BOARD OF PHARMACY

Final Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-121).**

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-20).

18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15).

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehousemen (amending 18VAC110-50-20).

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: October 14, 2020.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The amendments increase Board of Pharmacy fees to cover expenses for essential functions of reviewing applications, licensing, inspecting, investigating complaints against

licensees, and adjudicating and monitoring disciplinary cases. The amendments include a 30% increase in all fees, with the exception of those functions that require an inspection, including an initial pharmacy permit and changes in location or remodeling, which are set at the actual charge to the board by the enforcement division of the Department of Health Professions.

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

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Pharmacy permit	\$270 <u>\$500</u>
2. Permitted physician licensed to dispense drugs	\$270 <u>\$500</u>
3. Medical equipment supplier permit	\$180 <u>\$235</u>
4. Outsourcing facility permit	\$270 <u>\$350</u>
5. Nonresident pharmacy registration	\$270 <u>\$350</u>
6. Nonresident outsourcing facility registration	\$270 <u>\$350</u>
7. Controlled substances registrations	\$90 <u>\$120</u>
8. Innovative program approval.	\$250 <u>\$325</u>

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

9. Approval of a repackaging training program	\$50 <u>\$65</u>
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C. Annual renewal fees.

1. Pharmacy permit – due no later than April 30	\$270 <u>\$350</u>
2. Physician permit to practice pharmacy – due no later than February 28	\$270 <u>\$350</u>
3. Medical equipment supplier permit – due no later than February 28	\$180 <u>\$235</u>
4. Outsourcing facility permit – due no later than April 30	\$270 <u>\$350</u>
5. Nonresident pharmacy registration – due no later than the date of initial registration	\$270 <u>\$350</u>

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6. Nonresident outsourcing facility registration – due no later than the date of initial registration	\$270 <u>\$350</u>
7. Controlled substances registrations – due no later than February 28	\$90 <u>\$120</u>
8. Innovative program continued approval based on board order not to exceed \$200 <u>\$260</u> per approval period.	
9. Repackaging training program every two years	\$30 <u>\$40</u>

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired permit or registration within one year of the expiration date. In addition, engaging in activities requiring a permit or registration after the expiration date of such permit or registration shall be grounds for disciplinary action by the board.

1. Pharmacy permit	\$90 <u>\$120</u>
2. Physician permit to practice pharmacy	\$90 <u>\$120</u>
3. Medical equipment supplier permit	\$60 <u>\$80</u>
4. Outsourcing facility permit	\$90 <u>\$120</u>
5. Nonresident pharmacy registration	\$90 <u>\$120</u>
6. Nonresident outsourcing facility registration	\$90 <u>\$120</u>
7. Controlled substances registrations	\$30 <u>\$40</u>
8. Repackaging training program	\$10 <u>\$15</u>

E. Reinstatement fees.

1. Any person or entity attempting to renew a permit or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	\$240 <u>\$315</u>
b. Physician permit to practice pharmacy	\$240 <u>\$315</u>

c. Medical equipment supplier permit	\$210 <u>\$275</u>
d. Outsourcing facility permit	\$240 <u>\$315</u>
e. Nonresident pharmacy registration	\$115 <u>\$150</u>
f. Nonresident outsourcing facility registration	\$240 <u>\$315</u>
g. Controlled substances registration	\$180 <u>\$235</u>
h. Repackaging training program	\$50 <u>\$65</u>

F. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50 <u>\$65</u>
2. Change of ownership for any facility	\$50 <u>\$65</u>
3. Inspection for remodeling or change of location for any facility	\$150 <u>\$300</u>
4. Reinspection of any facility	\$150 <u>\$300</u>
5. Board-required inspection for a robotic pharmacy system	\$150 <u>\$300</u>
6. Board-required inspection of an innovative program location	\$150 <u>\$300</u>
7. Change of pharmacist responsible for an approved innovative program	\$25 <u>\$35</u>

G. Miscellaneous fees.

1. Returned check	\$35 <u>\$35</u>
2. Duplicate permit or registration	\$40 <u>\$15</u>
3. Verification of permit or registration	\$25 <u>\$35</u>

18VAC110-20-121. Innovative program approval.

A. An informal conference committee of the board may approve an innovative or pilot program in accordance with § 54.1-3307.2 of the Code of Virginia upon receipt of an application and fee specified in 18VAC110-20-20.

B. If the informal conference committee determines that an inspection is necessary to adequately consider an application, it may require that the applicant pay a fee specified in 18VAC110-20-20 to cover the cost of the inspection.

C. If the informal conference committee determines that a technical consultant is necessary in order for the board to make an informed decision on approval of a program, the applicant shall pay a consultant fee, not to exceed the actual cost of the consultation.

D. In the initial order granting approval of a program, the informal conference committee shall set the approval period with a schedule for submission of required reports and outcome data. The frequency of required reports shall not exceed four times a year.

E. The informal conference committee shall determine the appropriate fee for continued approval of the program based on the requirements for review and monitoring. Such renewal fee shall not exceed ~~\$200~~ \$260 per approval period.

18VAC110-21-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180 <u>\$235</u>
2. Pharmacy intern registration	\$45 <u>\$20</u>
3. Pharmacy technician registration	\$25 <u>\$35</u>
4. Approval of a pharmacy technician training program	\$150 <u>\$200</u>
5. Approval of a continuing education program	\$100 <u>\$130</u>

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	\$90 <u>\$120</u>
2. Pharmacist inactive license – due no later than December 31	\$45 <u>\$60</u>
3. Pharmacy technician registration – due no later than December 31	\$25 <u>\$35</u>
4. Pharmacy technician training program every two years	\$75 <u>\$100</u>

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license or registration within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license or registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30 <u>\$40</u>
2. Pharmacist inactive license	\$15 <u>\$20</u>

3. Pharmacy technician registration ~~\$40~~ \$15

4. Pharmacy technician training program ~~\$45~~ \$20

F. Reinstatement fees. Any person or entity attempting to renew a license or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license ~~\$240~~ \$275

2. Pharmacist license after revocation or suspension ~~\$500~~ \$650

3. Pharmacy technician registration ~~\$35~~ \$45

4. Pharmacy technician registration after revocation or suspension ~~\$125~~ \$165

5. A pharmacy technician training program that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus a reinstatement fee of \$75. A pharmacy technician training program that ceases operation and wishes to resume shall not be eligible for reinstatement but shall apply for a new registration.

G. Miscellaneous fees.

1. Duplicate wall certificate	\$25 <u>\$50</u>
2. Returned check	\$35
3. Duplicate license or registration	\$40 <u>\$15</u>
4. Verification of licensure or registration	\$25 <u>\$35</u>

18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~\$180~~ \$235.

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2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~\$240~~ \$315.

C. Annual renewal fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~\$90~~ \$120.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~\$240~~ \$315.

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date.

1. License for practitioner of the healing arts to sell controlled substances: ~~\$30~~ \$40.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~\$40~~ \$50.

E. Reinstatement fees. Any person or entity attempting to renew a license or permit more than one year after the expiration date shall submit an application for reinstatement with any required fees.

1. License for practitioner of the healing arts to sell controlled substances: ~~\$150~~ \$195.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: ~~\$240~~ \$315.

3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: ~~\$500~~ \$650.

F. Facilities in which only one practitioner of the healing arts is licensed by the board to sell controlled substances shall be exempt from fees associated with obtaining and renewing a facility permit. Facilities that change from only one practitioner to more than one shall notify the board within 30 days of such change.

G. The fee for reinspection of any facility shall be ~~\$150~~ \$300.

H. The fee for a returned check shall be \$35.

18VAC110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270 <u>\$350</u>
2. Restricted manufacturer permit	\$180 <u>\$235</u>
3. Wholesale distributor license	\$270 <u>\$350</u>
4. Warehouser permit	\$270 <u>\$350</u>
5. Nonresident wholesale distributor registration	\$270 <u>\$350</u>
6. Controlled substances registration	\$90 <u>\$120</u>

7. Third-party logistics provider permit ~~\$270~~ \$350

8. Nonresident manufacturer registration ~~\$270~~ \$350

9. Nonresident warehouser registration ~~\$270~~ \$350

10. Nonresident third-party logistics provider registration ~~\$270~~ \$350

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit ~~\$270~~ \$350

2. Restricted manufacturer permit ~~\$180~~ \$235

3. Wholesale distributor license ~~\$270~~ \$350

4. Warehouser permit ~~\$270~~ \$350

5. Nonresident wholesale distributor registration ~~\$270~~ \$350

6. Controlled substances registration ~~\$90~~ \$120

7. Third-party logistics provider permit ~~\$270~~ \$350

8. Nonresident manufacturer registration ~~\$270~~ \$350

9. Nonresident warehouser registration ~~\$270~~ \$350

10. Nonresident third-party logistics provider registration ~~\$270~~ \$350

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit ~~\$90~~ \$120

2. Restricted manufacturer permit ~~\$60~~ \$80

3. Wholesale distributor license ~~\$90~~ \$120

4. Warehouser permit ~~\$90~~ \$120

5. Nonresident wholesale distributor registration ~~\$90~~ \$120

6. Controlled substances registration ~~\$30~~ \$40

7. Third-party logistics provider permit ~~\$90~~ \$120

8. Nonresident manufacturer registration ~~\$90~~ \$120

9. Nonresident warehouser registration ~~\$90~~ \$120

10. Nonresident third-party logistics provider registration ~~\$90~~ \$120

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date

BOARD OF PHYSICAL THERAPY

Final Regulation

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (adding 18VAC112-20-121).

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

Effective Date: October 29, 2020.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Summary:

This action establishes the qualifications for and limitations of the performance of dry needling by physical therapists, including referral and direction from a medical practitioner, training, requirements for additional post-graduate training, the content of the post-graduate training, and informed consent.

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.

18VAC112-20-121. Practice of dry needling.

A. Dry needling is an invasive procedure that requires referral and direction in accordance with § 54.1-3482 of the Code of Virginia. Referral should be in writing; if the initial referral is received orally, it shall be followed up with a written referral.

B. Dry needling is not an entry level skill but an advanced procedure that requires additional post-graduate training.

1. The training shall be specific to dry needling and shall include emergency preparedness and response, contraindications and precautions, secondary effects or complications, palpation and needle techniques, and physiological responses.

2. The training shall consist of didactic and hands-on laboratory education and shall include passage of a theoretical and practical examination. The hands-on laboratory education shall be face-to-face.

3. The training shall be in a course [~~certified by FSBPT or~~] approved or provided by a sponsor listed in subsection B of 18VAC112-20-131.

4. The practitioner shall not perform dry needling beyond the scope of the highest level of the practitioner's training.

C. Prior to the performance of dry needling, the physical therapist shall obtain informed consent from the patient or [~~his~~ the patient's] representative. The informed consent shall

shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

- a. Nonrestricted manufacturer permit \$240 ~~\$315~~
- b. Restricted manufacturer permit \$210 ~~\$275~~
- c. Wholesale distributor license \$240 ~~\$315~~
- d. Warehouser permit \$240 ~~\$315~~
- e. Nonresident wholesale distributor registration \$240 ~~\$315~~
- f. Controlled substances registration \$180 ~~\$235~~
- g. Third-party logistics provider permit \$240 ~~\$315~~
- h. Nonresident manufacturer registration \$240 ~~\$315~~
- i. Nonresident warehouser registration \$240 ~~\$315~~
- j. Nonresident third-party logistics provider registration \$240 ~~\$315~~

F. Application for change or inspection fees.

- 1. Reinspection fee \$150 ~~\$300~~
- 2. Inspection fee for change of location, structural changes, or security system changes \$150 ~~\$300~~
- 3. Change of ownership fee \$50 ~~\$65~~
- 4. Change of responsible party \$50 ~~\$65~~

G. The fee for a returned check shall be \$35.

H. The fee for verification of license, permit, or registration shall be ~~\$25~~ \$35.

VA.R. Doc. No. R18-5322; Filed August 26, 2020, 11:36 a.m.

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include the risks and benefits of the technique. The informed consent form shall be maintained in the patient record.

D. Dry needling shall only be performed by a physical therapist trained pursuant to subsection B of this section and shall not be delegated to a physical therapist assistant or other support personnel.

VA.R. Doc. No. R16-4433; Filed August 12, 2020, 2:12 p.m.

BOARD OF COUNSELING

Proposed Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-20, 18VAC115-20-40, 18VAC115-20-52, 18VAC115-20-70, 18VAC115-20-100).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-20, 18VAC115-50-30, 18VAC115-50-60, 18VAC115-50-70, 18VAC115-50-90).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-20, 18VAC115-60-40, 18VAC115-60-80, 18VAC115-60-90, 18VAC115-60-110).

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information:

October 9, 2020 - 10:20 a.m. - WebEx - The link and instructions to attend the electronic meeting will be in the agenda package posted prior to the meeting at <http://www.dhp.virginia.gov> and on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. Specific authority for issuance of a temporary resident license counseling is found in § 54.1-3505 of the Code of Virginia.

Purpose: The purpose of this action is to ensure persons who are granted a temporary license for the purpose of completing a residency in counseling are qualified to provide mental health services to vulnerable individuals and groups. Qualifications for issuance of a resident license will ensure minimal competency to begin supervised practice, and

requirements for renewal will ensure that residents have further knowledge of the ethics and standards of practice governing the behavioral health professions in order to protect health, safety, and welfare of the citizens they serve.

Substance: Regulations implement the statutory mandate for issuance of a temporary license for a residency in counseling. The amendments set fees for initial and renewal of a resident license, qualifications for the issuance of a license and for its renewal, limitations on the number of times a resident may renew the temporary license, and a time limit for passage of the licensing examination.

Issues: The advantage of a resident license to the public is greater accountability and information about the residency; there are no disadvantages. There may be an advantage to residents and the licensees or organizations for whom they work under supervision in that some third-party payors may reimburse for their services as a "licensed" professional.

The primary advantage to the agency is greater awareness of any disciplinary history prior to issuance of a license. There are no disadvantages; fees are established with the intent of covering expenditures directly related to the licensing and discipline of persons with a resident license.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a legislative mandate, the Board of Counseling (Board) proposes to switch from a registration approach to a temporary licensing approach for regulating resident counselors.

Background. Chapter 428 of the 2019 General Assembly¹ mandated the Board "to promulgate regulations for the issuance of temporary licenses to individuals engaged in a counseling residency so that they may acquire the supervised, postgraduate experience required for licensure." The Board adopted emergency regulations² that established temporary licenses for residency in professional counseling, marriage and family therapy, and substance abuse treatment to comply with the mandate. All persons previously registered for supervised practice were grandfathered with a temporary license. This action replaces the emergency regulations.

Prior to the legislative mandate, counselor candidates under the three counseling regulations affected by this action registered their residency (i.e. a postgraduate, supervised clinical experience) with the Board. Under the new law, resident counselors are issued a temporary license to complete their residency in counseling. Thus, the main difference is between issuing a temporary license versus registering the residency with the Board. However, an important limitation, that is a resident can practice only under supervision, remains unchanged.

Estimated Benefits and Costs. This action mainly replaces the registration approach for residents in professional counseling, marriage and family therapy, and substance abuse treatment with that of a temporary licensing approach. Having a temporary license rather than having the residency registered with the Board may encourage some supervisors billing resident's services to some third-party payors. For example, according to the Department of Health Professions (DHP), Virginia Medicaid has allowed billing for resident's services before this change and would continue to do so. Thus, to the extent reimbursement policies of the payors allow, more supervisors may start billing for resident services as a "licensed" professional, possibly at a lower rate than for an independent practitioner. Such a change may occur if it benefits the supervisor, the payor, and the resident.

The Board also proposes several fee changes. The \$30 fee for adding or changing supervisor or the work site under the registration approach is replaced with the \$30 fee for annual renewal of the temporary license. According to DHP, on average, a resident used to make two such changes each year and used to pay a \$30 fee for each. Under the new regulation, a one-time \$30 fee for annual renewal of the temporary license would suffice, reducing the fee burden on residents by one half on average.

A "pre-review of education only" fee of \$75 would be established. According to DHP, the Board gets requests from potential applicants for a review of a person's educational credentials to see whether they meet the qualifications for full licensure. Currently, the only way that can be done is for him to submit an application for licensure (which includes many other requirements as well). The \$75 fee would allow such a review, which is typically a review of the transcript – course by course – often with request for a syllabus to determine content and a review of the program itself to determine its concentration in counseling. If it is determined that the person's education does not qualify for licensure, he may be able to remedy the deficiency. If not, he is spared the expense of obtaining the hours of supervised experience and sitting for the examination. Thus, the "pre-review of education only" option is expected to benefit the residents who are interested in applying for a full license when the time comes, but who does not know whether their educational background would meet the qualifications for full licensure. The new "pre-review of education only" option would encourage such applications and may lead to full licenses being issued sooner.

The Board proposes a new \$10 fee for late temporary license renewal.³ As with any other late fees, this fee would likely promote timely renewal applications. The \$65 fee for application and initial temporary licensure for a resident is also established, but is not expected to create any economic effect as this is the current fee for registration of supervision.

The remaining proposed changes are mainly intended to align the new temporary license requirements with the full license

requirements. Of those, some are slightly more stringent than the current standards. These include more rigorous background requirements (submission of additional report from a national practitioner databank at a cost of \$4 per report and history of disciplinary actions which can be obtained without a charge), completion of three hours of continuing education (can be obtained online at no cost), and clearer consumer disclosure requirements (that the resident does not have authority for independent practice and is under supervision). The other requirements under this category are either comparable or even less stringent than the current requirements. Those include the establishing time limits to complete the residency (a resident must pass the exam within six years which is comparable to currently required four years to complete the residency and two years to pass the exam), establishing renewal times (annual renewal in the month of initial issuance), and new elements required for renewal (attestation that a supervisory contract is in effect as opposed to notifying the Board each time there is a change). Overall these requirements may introduce a marginal burden on the applicants in terms of the time to complete the application, but would also help ensure greater accountability and information about the residency.

Businesses and Other Entities Affected. When the emergency regulation became effective, there were 9,156 residents in counseling, 352 residents in marriage and family therapy, and eight residents in substance abuse treatment all whom were grandfathered with a temporary license.⁴ Since the Board recently started issuing temporary licenses for residents, there is not enough history to accurately assess the likely number of applications on an ongoing basis. However, through March 2020, there were 177, seven, and two applications respectively for residency in licensed professional counseling, marriage and family therapy, and substance abuse treatment, but DHP expects that the majority of application will come after graduation in May/June.

As noted, some of the changes are beneficial to counselor candidates and some are slightly more restrictive than before. It is not clear whether the additional costs would exceed the benefits for the candidates. Thus, no adverse economic impact⁵ on counselor candidates is indicated.

Small Businesses⁶ Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities⁷ Affected.⁸ The proposed amendments potentially affect all 132 localities. The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required.

Projected Impact on Employment. The proposed amendments do not appear to directly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect real estate development costs.

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¹<https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0428>

²<https://townhall.virginia.gov/ViewStage.cfm?stageid=8734>

³According to DHP, late fees are set approximately 1/3 of the renewal fee.

⁴Data source: DHP

⁵Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁶Pursuant 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."

⁷"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments provide for the issuance of a temporary license for a residency in counseling for professional counselors, marriage and family therapists, and substance abuse treatment practitioners, including (i) setting fees for initial and renewal of a resident license, (ii) establishing qualifications for the issuance of a license and for its renewal, (iii) limiting the number of times a resident may renew the temporary license, and (iv) setting a time limit for passage of the licensing examination.

Part I General Provisions

18VAC115-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Counseling"

"Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"CORE" means Council on Rehabilitation Education.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience ~~registered with the board.~~

"Resident" means an individual who has ~~submitted a supervisory contract and has received board approval~~ been issued a temporary license by the board to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction that is specific to the

clinical counseling services being performed with respect to the clinical skills and competencies of the person supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor or a resident in counseling:

Active annual license renewal	\$130
Inactive annual license renewal	\$65
Initial licensure by examination: Application processing and initial licensure <u>as a professional counselor</u>	\$175
Initial licensure by endorsement: Application processing and initial licensure <u>as a professional counselor</u>	\$175
Registration of supervision <u>Application and initial licensure as a resident in counseling</u>	\$65
Add or change supervisor <u>Pre-review of education only</u>	\$30 \$75
Duplicate license	\$10
Verification of licensure to another jurisdiction	\$30
<u>Active annual license renewal for a professional counselor</u>	\$130
<u>Inactive annual license renewal for a professional counselor</u>	\$65
<u>Annual renewal for a resident in counseling</u>	\$30
Late renewal <u>for a professional counselor</u>	\$45
<u>Late renewal for a resident in counseling</u>	\$10
Reinstatement of a lapsed license <u>for a professional counselor</u>	\$200
<u>Reinstatement following revocation or suspension</u>	\$600
Replacement of or additional wall certificate	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

Part II

Requirements for Licensure as a Professional Counselor

18VAC115-20-40. Prerequisites for licensure by examination.

Every applicant for licensure examination by the board shall:

1. Meet the degree program requirements prescribed in 18VAC115-20-49, the ~~course—work~~ coursework requirements prescribed in 18VAC115-20-51, and the experience requirements prescribed in 18VAC115-20-52;
2. Pass the licensure examination specified by the board;
3. Submit the following to the board:
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and coursework requirements prescribed in 18VAC115-20-49 and 18VAC115-20-51. Transcripts previously submitted for ~~registration of supervision~~ board approval of a resident license do not have to be resubmitted unless additional coursework was subsequently obtained;
 - c. Verification of ~~Supervision~~ supervision forms documenting fulfillment of the residency requirements of 18VAC115-20-52 and copies of all required evaluation forms, including verification of current licensure of the supervisor if any portion of the residency occurred in another jurisdiction;
 - d. Verification of any other mental health or health professional license or certificate ever held in another jurisdiction;
 - e. The application processing and initial licensure fee as prescribed in 18VAC115-20-20; and
 - f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-20-52. ~~Residency~~ Resident license and requirements for a residency.

A. ~~Registration~~ Resident license. Applicants ~~who render for temporary licensure as a resident in counseling services~~ shall:

1. ~~With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision~~ Apply for licensure on a form

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provided by the board to include the following: (i) verification of a supervisory contract, (ii) the name and licensure number of the clinical supervisor and location for the supervised practice, and (iii) an attestation that the applicant will be providing clinical counseling services;

2. Have submitted an official transcript documenting a graduate degree ~~as that meets the requirements~~ specified in 18VAC115-20-49 to include completion of the coursework and internship requirement specified in 18VAC115-20-51; ~~and~~

3. Pay the registration fee;

4. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

5. Have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration in Virginia or in another jurisdiction. The board will consider the history of disciplinary action on a case-by-case basis.

B. Residency requirements.

1. The applicant for licensure as a professional counselor shall have completed a 3,400-hour supervised residency in the role of a professional counselor working with various populations, clinical problems, and theoretical approaches in the following areas:

- a. Assessment and diagnosis using psychotherapy techniques;
- b. Appraisal, evaluation, and diagnostic procedures;
- c. Treatment planning and implementation;
- d. Case management and recordkeeping;
- e. Professional counselor identity and function; and
- f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of in-person supervision between supervisor and resident in the consultation and review of clinical counseling services provided by the resident. Supervision shall occur at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency. For the purpose of meeting the 200-hour supervision requirement, in-person may include the use of secured technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. Up to 20 hours of the supervision received during the supervised internship may be counted ~~towards~~ toward the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.

3. No more than half of the 200 hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

4. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.

5. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical counseling services. The remaining hours may be spent in the performance of ancillary counseling services.

6. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-20-49, may count for up to an additional 300 hours ~~towards~~ toward the requirements of a residency.

7. Supervised practicum and internship hours in a CACREP-accredited doctoral counseling program may be accepted for up to 900 hours of the residency requirement and up to 100 of the required hours of supervision provided the supervisor holds a current, unrestricted license as a professional counselor.

8. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue. A resident shall meet the renewal requirements of subsection C of 18VAC115-20-100 in order to maintain a license in current, active status.

9. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervision.

10. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing ~~of the resident's status~~ that the resident does not have authority for independent practice and is under supervision and shall provide the supervisor's name, professional address, and phone number.

11. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

12. Residency hours approved by the licensing board in another United States jurisdiction that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in professional counseling shall:

1. Document two years of post-licensure clinical experience;
2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106; and
3. Hold an active, unrestricted license as a professional counselor or a marriage and family therapist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor. Supervisors who are substance abuse treatment practitioners, school psychologists, clinical psychologists, clinical social workers, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

D. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.
2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.
3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.
4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.
5. The supervisor shall provide supervision as defined in 18VAC115-20-10.

E. Applicants shall document successful completion of their residency on the Verification of Supervision Form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to April 12, 2000, may be accepted toward licensure if this supervised experience met the board's requirements that were in effect at the time the supervision was rendered.

Part III
Examinations

18VAC115-20-70. General examination requirements; schedules; time limits.

A. Every applicant for initial licensure by examination by the board as a professional counselor shall pass a written examination as prescribed by the board. An applicant is required to have passed the prescribed examination within six years from the date of initial issuance of a resident license by the board.

B. Every applicant for licensure by endorsement shall have passed a licensure examination in the jurisdiction in which licensure was obtained.

~~C. A candidate approved to sit for the examination shall pass the examination within two years from the date of such initial approval. If the candidate has not passed the examination by the end of the two-year period here prescribed:~~

- ~~1. The initial approval to sit for the examination shall then become invalid; and~~
- ~~2. The applicant shall file a new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the applicant shall pass the examination within two years of such approval. If the examination is not passed within the additional two-year period, a new application will not be accepted.~~

~~D. C.~~ The board shall establish a passing score on the written examination.

~~E. D.~~ A candidate for examination or an applicant shall not provide clinical counseling services unless he is under supervision approved by the board resident shall remain in a residency practicing under supervision until the resident has passed the licensure examination and been granted a license as a professional counselor.

Part IV
Licensure Renewal; Reinstatement

18VAC115-20-100. Annual renewal of licensure.

~~A. All licensees shall renew licenses on or before June 30 of each year.~~

~~B. A.~~ Every license holder licensed professional counselor who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-20-20.

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C. B. A licensee licensed professional counselor who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-20-20. No person shall practice counseling in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in subsection C of 18VAC115-20-110 C.

C. For renewal of a resident license in counseling, the following shall apply:

1. A resident license shall expire annually in the month the resident license was initially issued and may be renewed up to five times by submission of the renewal form and payment of the fee prescribed in 18VAC115-20-20.

2. On the annual renewal, the resident shall attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which the resident is currently providing clinical counseling services.

3. On the annual renewal, the resident in counseling shall attest to completion of three hours in continuing education courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia, offered by an approved provider as set forth in subsection B of 18VAC115-20-106.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. Practice with an expired license is prohibited and may constitute grounds for disciplinary action.

NOTICE: Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-20)

[Registration of Supervision - Post Graduate Degree Supervised Experience, LPC Form 1 \(rev. 2/2011\)](#)

[Quarterly Evaluation, LPC Form 1-QE \(rev. 2/2011\)](#)

[Licensure Verification of Out-of-State Supervisor, LPC Form 1-LV \(rev. 2/2011\)](#)

[Licensure Application, LPC Form 2 \(rev. 2/2011\)](#)

[Verification of Supervision – Post-Graduate Degree Supervised Experience, LPC Form 2-VS \(rev. 2/2011\)](#)

[Coursework Outline Form, LPC Form 2-CO \(rev. 2/2011\)](#)

[Verification of Internship Hours Towards the Residency, LPC Form 2-IR \(rev. 2/2011\)](#)

[Verification of Internship, LPC Form 2-VI \(rev. 2/2011\)](#)

[Verification of Licensure, LPC Form 2-VL \(rev. 2/2011\)](#)

[Supervision Outline - Examination Applicants Only, LPC Form 2-SO \(rev. 2/2011\)](#)

[Verification of Clinical Practice, 5 of Last 6 Years Immediately Preceding Submission of Application for Licensure, LPC Form-ECP \(rev. 2/2011\)](#)

[Continuing Education Summary Form \(LPC\) \(rev. 3/2009\)](#)

[Application for Reinstatement of a Lapsed License \(rev. 8/2007\)](#)

[Application for Reinstatement of a Revoked, Suspended, or Surrendered License \(rev. 8/2007\)](#)

[Application Instructions for Temporary Licensure as a Resident in Counseling \(rev. 12/2019\)](#)

18VAC115-50-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Clinical marriage and family services" means activities such as assessment, diagnosis, and treatment planning and treatment implementation for couples and families.

"Face-to-face" means the in-person delivery of clinical marriage and family services for a client.

"Internship" means a formal academic course from a regionally accredited university in which supervised practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Residency" means a postgraduate, supervised, clinical experience ~~registered with the board.~~

"Resident" means an individual who has ~~submitted~~ a supervisory contract ~~to the board~~ and has ~~received~~ been issued a temporary license by the board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person ~~or persons~~ being supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-50-20. Fees.

A. The board has established fees for the following:

Registration of supervision <u>Application and initial licensure as a resident</u>	\$65
Add or change supervisor <u>Pre-review of education only</u>	\$30 <u>\$75</u>
Initial licensure by examination: Processing and initial licensure <u>as a marriage and family therapist</u>	\$175
Initial licensure by endorsement: Processing and initial licensure <u>as a marriage and family therapist</u>	\$175
Active annual license renewal <u>for a marriage and family therapist</u>	\$130
Inactive annual license renewal <u>for a marriage and family therapist</u>	\$65
<u>Annual renewal for a resident in marriage and family therapy</u>	<u>\$30</u>
Penalty for late renewal <u>for a marriage and family therapist</u>	\$45
<u>Late renewal for resident in marriage and family therapy</u>	<u>\$10</u>
Reinstatement of a lapsed license <u>for a marriage and family therapist</u>	\$200
Verification of license to another jurisdiction	\$30
Additional or replacement licenses	\$10
Additional or replacement wall certificates	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-50-30. Application for licensure as a marriage and family therapist by examination.

Every applicant for licensure by examination by the board shall:

1. Meet the education and experience requirements prescribed in 18VAC115-50-50, 18VAC115-50-55, and 18VAC115-50-60;
2. Meet the examination requirements prescribed in 18VAC115-50-70;
3. Submit to the board office the following items:
 - a. A completed application;
 - b. The application processing and initial licensure fee prescribed in 18VAC115-50-20;
 - c. Documentation, on the appropriate forms, of the successful completion of the residency requirements of 18VAC115-50-60 along with documentation of the supervisor's out-of-state license where applicable;
 - d. Official ~~transcript or~~ transcripts submitted from the appropriate institutions of higher education, verifying satisfactory completion of the education requirements set forth in 18VAC115-50-50 and 18VAC115-50-55. Previously submitted transcripts for ~~registration of supervision~~ board approval of a resident license do not have to be resubmitted unless additional coursework was subsequently obtained;
 - e. Verification on a board-approved form of any mental health or health out-of-state license, certification, or registration ever held in another jurisdiction; and
 - f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-50-60. Residency Resident license and requirements for a residency.

A. ~~Registration~~ Resident license. Applicants ~~who render for temporary licensure as a resident in~~ marriage and family therapy ~~services~~ shall:

1. ~~With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision~~ Apply for licensure on a form provided by the board to include the following:

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(i) verification of a supervisory contract, (ii) the name and licensure number of the supervisor and location for the supervised practice, and (iii) an attestation that the applicant will be providing marriage and family services.

2. Have submitted an official transcript documenting a graduate degree as that meets the requirements specified in 18VAC115-50-50 to include completion of the coursework and internship requirement specified in 18VAC115-50-55; ~~and~~

3. Pay the registration fee;

4. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

5. Have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration in Virginia or in another jurisdiction. The board will consider the history of disciplinary action on a case-by-case basis.

B. Residency requirements.

1. The applicant for licensure as a marriage and family therapist shall have completed no fewer than 3,400 hours of supervised residency in the role of a marriage and family therapist, to include 200 hours of in-person supervision with the supervisor in the consultation and review of marriage and family services provided by the resident. For the purpose of meeting the 200 hours of supervision required for a residency, in-person may also include the use of technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist.

a. Residents shall receive a minimum of one hour and a maximum of four hours of supervision for every 40 hours of supervised work experience.

b. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

c. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed marriage and family therapist or a licensed professional counselor.

2. The residency shall include documentation of at least 2,000 hours in clinical marriage and family services of which 1,000 hours shall be face-to-face client contact with couples or families or both. The remaining hours may be spent in the performance of ancillary counseling services.

For applicants who hold current, unrestricted licensure as a professional counselor, clinical psychologist, or clinical social worker, the remaining hours may be waived.

3. The residency shall consist of practice in the core areas set forth in 18VAC115-50-55.

4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18VAC115-50-50.

5. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-50-50, may count for up to an additional 300 hours towards the requirements of a residency.

6. Supervised practicum and internship hours in a COAMFTE-accredited or a CACREP-accredited doctoral program in marriage and family therapy or counseling may be accepted for up to 900 hours of the residency requirement and up to 100 of the required hours of supervision provided the supervisor holds a current, unrestricted license as a marriage and family therapist or professional counselor.

7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability ~~which~~ that limits the resident's access to qualified supervision.

8. Residents shall not call themselves marriage and family therapists, directly bill for services rendered, or in any way represent themselves as marriage and family therapists. During the residency, residents may use their names, the initials of their degree, and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing ~~of the resident's status~~ that the resident does not have authority for independent practice and is under supervision, along with the name, address, and telephone number of the resident's supervisor.

9. Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

10. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue. A resident shall meet the renewal requirements of subsection C of 18VAC115-50-90 in order to maintain a resident license in current, active status.

11. Residency hours that are approved by the licensing board in another United States jurisdiction and that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in marriage and family therapy shall:

1. Hold an active, unrestricted license as a marriage and family therapist or professional counselor in the jurisdiction where the supervision is being provided;
2. Document two years post-licensure marriage and family therapy experience; and
3. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-50-96. At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist. Supervisors who are clinical psychologists, clinical social workers, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.
2. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.
3. The supervisor shall provide supervision as defined in 18VAC115-50-10 and shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the residency.

18VAC115-50-70. General examination requirements.

A. All applicants for initial licensure shall pass an examination, as prescribed by the board, with a passing score as determined by the board. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor issued by the board.

~~B. The examination shall concentrate on the core areas of marriage and family therapy set forth in subsection A of 18VAC115-50-55. An applicant is required to pass the prescribed examination within six years from the date of initial issuance of a resident license by the board.~~

~~C. A candidate approved to sit for the examination shall pass the examination within two years from the initial notification date of approval. If the candidate has not passed the examination within two years from the date of initial approval:~~

- ~~1. The initial approval to sit for the examination shall then become invalid; and~~

~~2. The applicant shall file a new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the candidate shall pass the examination within two years of such approval. If the examination is not passed within the additional two year period, a new application will not be accepted.~~

~~D. Applicants or candidates for examination shall not provide marriage and family services unless they are under supervision approved by the board.~~ C. A resident shall remain in a residency practicing under supervision until the resident has passed the licensure examination and been granted a license as a marriage and family therapist.

18VAC115-50-90. Annual renewal of license.

~~A. All licensees shall renew licenses on or before June 30 of each year.~~

~~B. A.~~ All licensees licensed marriage and family therapists who intend to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-50-20.

~~C. B.~~ A licensee licensed marriage and family therapist who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-50-20. No person shall practice marriage and family therapy in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in 18VAC115-50-100 C.

C. For renewal of a resident license in marriage and family therapy, the following shall apply:

1. A resident license shall expire annually in the month the license was initially issued and may be renewed up to five times by submission of the renewal form and payment of the fee prescribed in 18VAC115-50-20.
2. On the annual renewal, the resident shall attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which the resident is currently providing marriage and family therapy.
3. On the annual renewal, residents in marriage and family therapy shall attest to completion of three hours in continuing education courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia, offered by an approved provider as set forth in subsection B of 18VAC115-50-96.

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D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. After the renewal date, the license is expired; practice with an expired license is prohibited and may constitute grounds for disciplinary action.

NOTICE: Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-50)

[Licensure Application - Marriage and Family Therapist, MFT Form 2 \(rev. 2/2011\)](#)

[Verification of Licensure, MFT Form 2-VL \(rev. 2/2011\)](#)

[Verification of Supervision – Post-Graduate Degree Supervised Experience, MFT Form 2-VS \(rev. 2/2011\)](#)

[Licensure Verification of Out-of-State Supervisor, MFT Form 1-LV \(rev. 2/2011\)](#)

[Quarterly Evaluation, MFT Form 1-QE \(rev. 2/2011\)](#)

[Coursework Outline Form, MFT Form 2-CO \(rev. 2/2011\)](#)

[Verification of Internship, MFT Form 2-VI \(rev. 2/2011\)](#)

[Verification of Internship Hours Towards the Residency, MFT Form 2-IR \(rev. 2/2011\)](#)

[Supervision Outline - Examination Applicants Only, MFT Form 2-SO \(rev. 2/2011\)](#)

[Verification of Clinical Practice 5 of Last 6 Years Immediately Preceding Submission for Application of Licensure, Endorsement Applicants Only, Form MFT-ECP \(rev. 2/2011\)](#)

[Registration of Supervision - Post Graduate Degree Supervised Experience, MFT Form 1 \(rev. 2/2011\)](#)

[Application for Reinstatement of a Lapsed License \(rev. 8/2007\)](#)

[Continuing Education Summary Form \(LMFT\) \(rev. 3/2009\)](#)

[Applications Instructions - Temporary Licensure as a Resident in Marriage and Family Therapy \(rev. 12/2019\)](#)

Part I General Provisions

18VAC115-60-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Licensed substance abuse treatment practitioner"

"Substance abuse"

"Substance abuse treatment"

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

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical substance abuse treatment services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical substance abuse treatment services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country ~~which~~ that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting ~~which~~ that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience ~~registered with the board.~~

"Resident" means an individual who has ~~submitted~~ a supervisory contract and has ~~received board approval~~ been issued a temporary license by the board to provide clinical services in substance abuse treatment under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and resident in accordance with regulations of the board.

18VAC115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner or resident in substance abuse treatment:

Registration of supervision (initial)	\$65
<u>Application and initial licensure as a resident in substance abuse treatment</u>	
Add/change supervisor <u>Pre-review of education only</u>	\$30 \$75
Initial licensure by examination: Processing and initial licensure <u>as a substance abuse treatment practitioner</u>	\$175
Initial licensure by endorsement: Processing and initial licensure <u>as a substance abuse treatment practitioner</u>	\$175
Active annual license renewal <u>for a substance abuse treatment practitioner</u>	\$130
Inactive annual license renewal <u>for a substance abuse treatment practitioner</u>	\$65
<u>Annual renewal for a resident in substance abuse treatment</u>	<u>\$30</u>

Duplicate license	\$10
Verification of license to another jurisdiction	\$30
Late renewal <u>for a substance abuse treatment practitioner</u>	\$45
<u>Late renewal for a resident in substance abuse treatment</u>	<u>\$10</u>
Reinstatement of a lapsed license <u>of a substance abuse treatment practitioner</u>	\$200
Replacement of or additional wall certificate	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

Part II

Requirements for Licensure as a Substance Abuse Treatment Practitioner

18VAC115-60-40. Application for licensure by examination.

Every applicant for licensure by examination by the board shall:

1. Meet the degree program, coursework, and experience requirements prescribed in 18VAC115-60-60, 18VAC115-60-70, and 18VAC115-60-80;
2. Pass the examination required for initial licensure as prescribed in 18VAC115-60-90;
3. Submit the following items to the board:
 - a. A completed application;
 - b. Official transcripts documenting the applicant's completion of the degree program and coursework requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70. Transcripts previously submitted for ~~registration of supervision~~ board approval of a resident license do not have to be resubmitted unless additional coursework was subsequently obtained;
 - c. Verification of supervision forms documenting fulfillment of the residency requirements of 18VAC115-60-80 and copies of all required evaluation forms, including verification of current licensure of the supervisor of any portion of the residency occurred in another jurisdiction;

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- d. Documentation of any other mental health or health professional license or certificate ever held in another jurisdiction;
- e. The application processing and initial licensure fee as prescribed in 18VAC115-60-20; and
- f. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

4. Have no unresolved disciplinary action against a mental health or health professional license or certificate held in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-60-80. Residency Resident license and requirements for a residency.

A. ~~Registration Licensure.~~ Applicants ~~who render for a temporary resident license in substance abuse treatment services~~ shall:

- 1. ~~With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision. Apply for licensure on a form provided by the board to include the following: (i) verification of a supervisory contract, (ii) the name and licensure number of the supervisor and location for the supervised practice, and (iii) an attestation that the applicant will be providing substance abuse treatment services;~~
- 2. Have submitted an official transcript documenting a graduate degree ~~as~~ that meets the requirements specified in 18VAC115-60-60 to include completion of the coursework and internship requirement specified in 18VAC115-60-70; ~~and~~
- 3. Pay the registration fee;
- 4. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and
- 5. Have no unresolved disciplinary action against a mental health or health professional license, certificate, or registration in Virginia or in another jurisdiction. The board will consider the history of disciplinary action on a case-by-case basis.

B. Applicants who are beginning their residencies in exempt settings shall register supervision with the board to assure acceptability at the time of application.

C. Residency requirements.

- 1. The applicant for licensure as a substance abuse treatment practitioner shall have completed no fewer than 3,400 hours in a supervised residency in substance abuse treatment with various populations, clinical problems and theoretical approaches in the following areas:

- a. Clinical evaluation;
- b. Treatment planning, documentation, and implementation;
- c. Referral and service coordination;
- d. Individual and group counseling and case management;
- e. Client family and community education; and
- f. Professional and ethical responsibility.

2. The residency shall include a minimum of 200 hours of in-person supervision between supervisor and resident occurring at a minimum of one hour and a maximum of four hours per 40 hours of work experience during the period of the residency.

- a. No more than half of these hours may be satisfied with group supervision.
- b. One hour of group supervision will be deemed equivalent to one hour of individual supervision.
- c. Supervision that is not concurrent with a residency will not be accepted, nor will residency hours be accrued in the absence of approved supervision.
- d. For the purpose of meeting the 200-hour supervision requirement, in-person supervision may include the use of technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident.
- e. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed professional counselor.

3. The residency shall include at least 2,000 hours of face-to-face client contact in providing clinical substance abuse treatment services with individuals, families, or groups of individuals suffering from the effects of substance abuse or dependence. The remaining hours may be spent in the performance of ancillary services.

4. A graduate level degree internship in excess of 600 hours, which is completed in a program that meets the requirements set forth in 18VAC115-60-70, may count for up to an additional 300 hours towards the requirements of a residency.

5. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue. A resident shall meet the renewal requirements of subsection C of

18VAC115-60-110 in order to maintain a license in current, active status.

6. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability ~~which that~~ limits the resident's access to qualified supervision.

7. Residents may not call themselves substance abuse treatment practitioners, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or substance abuse treatment practitioners. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Substance Abuse Treatment" in all written communications. Clients shall be informed in writing ~~of the resident's status, that the resident does not have authority for independent practice and is under supervision and shall provide~~ the supervisor's name, professional address, and telephone number.

8. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

9. Residency hours that are approved by the licensing board in another United States jurisdiction and that meet the requirements of this section shall be accepted.

D. Supervisory qualifications.

1. A person who provides supervision for a resident in substance abuse treatment shall hold an active, unrestricted license as a professional counselor or substance abuse treatment practitioner in the jurisdiction where the supervision is being provided. Supervisors who are marriage and family therapists, school psychologists, clinical psychologists, clinical social workers, clinical nurse specialists, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

2. All supervisors shall document two years post-licensure substance abuse treatment experience and at least 100 hours of didactic instruction in substance abuse treatment. Supervisors must document a three-credit-hour course in supervision, a 4.0-quarter-hour course in supervision, or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-60-116.

E. Supervisory responsibilities.

1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision C 1 of this section.

F. Documentation of supervision. Applicants shall document successful completion of their residency on the Verification of Supervision form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet.

Part III
Examinations

18VAC115-60-90. General examination requirements; schedules; time limits.

A. Every applicant for ~~initial~~ licensure as a substance abuse treatment practitioner by examination shall pass a written examination as prescribed by the board. Such applicant is required to pass the prescribed examination within six years from the date of initial issuance of a resident license by the board.

B. Every applicant for licensure as a substance abuse treatment practitioner by endorsement shall have passed a substance abuse examination deemed by the board to be substantially equivalent to the Virginia examination.

C. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor issued by the board.

~~D. A candidate approved by the board to sit for the examination shall pass the examination within two years from the date of such initial board approval. If the candidate has not passed the examination within two years from the date of initial approval:~~

~~1. The initial board approval to sit for the examination shall then become invalid; and~~

~~2. The applicant shall file a complete new application with the board, meet the requirements in effect at that time, and provide evidence of why the board should approve the reapplication for examination. If approved by the board, the applicant shall pass the examination within two years of such approval. If the examination is not passed within the additional two-year period, a new application will not be accepted.~~

~~E. D.~~ The board shall establish a passing score on the written examination.

~~F. A candidate for examination or an applicant shall not provide clinical services unless he is under supervision approved by the board. E. A resident shall remain in a residency practicing under supervision until the resident has~~

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passed the licensure examination and been granted a license as a substance abuse treatment practitioner.

Part IV

Licensure Renewal; Reinstatement

18VAC115-60-110. Renewal of licensure.

~~A. All licensees shall renew licenses on or before June 30 of each year.~~

~~B. A. Every license holder substance abuse treatment practitioner~~ who intends to continue an active practice shall submit to the board on or before June 30 of each year:

1. A completed form for renewal of the license on which the licensee attests to compliance with the continuing competency requirements prescribed in this chapter; and
2. The renewal fee prescribed in 18VAC115-60-20.

~~C. B. A licensee substance abuse treatment practitioner~~ who wishes to place his license in an inactive status may do so upon payment of the inactive renewal fee as established in 18VAC115-60-20. No person shall practice substance abuse treatment in Virginia unless he holds a current active license. A licensee who has placed himself in inactive status may become active by fulfilling the reactivation requirements set forth in subsection C of 18VAC115-60-120 ~~C.~~

C. For renewal of a resident license in substance abuse treatment, the following shall apply:

1. A resident license shall expire annually in the month the resident license was initially issued and may be renewed up to five times by submission of the renewal form and payment of the fee prescribed in 18VAC115-60-20.
2. On the annual renewal, the resident shall attest that a supervisory contract is in effect with a board-approved supervisor for each of the locations at which the resident is currently providing substance abuse treatment services.
3. On the annual renewal, residents in substance abuse treatment shall attest to completion of three hours in continuing education courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia, offered by an approved provider as set forth in subsection B of 18VAC115-60-116.

D. Licensees shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

E. After the renewal date, the license is expired; practice with an expired license is prohibited and may constitute grounds for disciplinary action.

NOTICE: Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-60)

[Licensure Application, Licensed Substance Abuse Treatment Practitioner, LSATP Form 2 \(rev. 1/2011\)](#)

[Verification of Licensure, Form LSATP 2-VL \(rev. 1/2011\)](#)

[Verification of Supervision – Post Graduate Degree Supervised Experience, LSATP 2-VS \(rev. 1/2011\)](#)

[Supervisor's Experience and Education \(rev. 1/2011\)](#)

[Licensure Verification of Out-of-State Supervisor, LSATP Form 1-LV \(rev. 1/2011\)](#)

[Coursework Outline Form, Form LSATP 2-CO \(rev. 1/2011\)](#)

[Verification of Internship, Form LSATP 2-VI \(rev. 1/2011\)](#)

[Verification of Internship Hours Towards the Residency, Form LSATP 2-IR \(rev. 1/2011\)](#)

[Registration of Supervision – Post Graduate Degree Supervised Experience, LSATP Form 1 \(rev. 1/2011\)](#)

[Quarterly Evaluation Form, LSATP Form 1-QE \(rev. 1/2011\)](#)

[Supervision Outline Form – Examination Applicants Only, Form LSATP 2-SO \(rev. 1/2011\).](#)

[Verification of Post-Licensure Clinical Practice, Endorsement Applicants Only, Form LSATP-ECP \(rev. 1/2011\)](#)

[Licensed Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed Certificate \(rev. 7/2011\)](#)

[Continuing Education Summary Form \(LSATP\) \(rev. 3/2009\)](#)

[Application Instructions for Temporary Licensure as a Resident in Substance Abuse Treatment \(rev. 12/2019\)](#)

VA.R. Doc. No. R20-6111; Filed August 16, 2020, 9:42 a.m.

Proposed Regulation

Title of Regulation: **18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20, 18VAC115-40-22, 18VAC115-40-25, 18VAC115-40-26, 18VAC115-40-30, 18VAC115-40-35, 18VAC115-40-38, 18VAC115-40-50).**

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

Public Hearing Information:

October 9, 2020 - 10:05 a.m. - WebEx - The link and instructions to attend the electronic meeting will be in the agenda package posted prior to the meeting at <http://www.dhp.virginia.gov> and on the Virginia Regulatory Town Hall (www.townhall.virginia.gov).

Public Comment Deadline: November 13, 2020.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of the profession of counseling is found in § 54.1-3505 of the Code of Virginia.

Purpose: Additional standards of conduct and causes for disciplinary action will provide further guidance to licensees on the expectations for ethical practice and give the board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety, and welfare of the public.

Substance: In addition to edits for clarity and updating of terminology, the following changes were adopted.

18VAC115-22, clarify that unresolved disciplinary action in another jurisdiction may be grounds to deny certification, but the board will consider each on a case-by-case basis.

18VAC115-25, require "verification" of any other mental health or health license in another jurisdiction. Documentation is not necessary, provided the verification comes from the other jurisdiction; the only "licenses" the board is concerned about are mental health or health licenses.

18VAC115-26, replace the words "members" with the word "persons" who are in group supervision.

18VAC115-30, change the renewal date from January 31 to June 30 for consistency with renewal for other professions.

18VAC115-35, provide examples of "evidence" of continuing ability to perform the functions of a rehabilitation provider that may be required for reinstatement, such as continuing education or practice in another state.

18VAC115-38, add the requirement for notification of a name change and change the requirement from 30 to 60 days for submission of information on changes.

18VAC115-50, add the following grounds for disciplinary action that exist in other regulations for the Board of Counseling:

- Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public;
- Performance of functions outside the board-certified area of competency;
- Intentional or negligent conduct that causes or is likely to cause injury to a client;
- Performance of an act likely to deceive, defraud, or harm the public;
- Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
- Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia, or elder abuse or neglect as required in § 63.2-1606 in the Code of Virginia;
- Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility; and
- Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

Issues: The primary advantage to the public is greater accountability by the addition of grounds for disciplinary action if any issues with the practice of rehabilitation providers arise; there are no disadvantages to the public.

There are no advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) seeks to amend 18VAC115-40 Regulations Governing the Certification of Rehabilitation Providers in order to implement changes resulting from a periodic review undertaken in 2018.¹ The proposed amendments include: (i) updating the requirements for application and reinstatement of the certification, (ii) adding a fee for anyone requesting documentation of their certification from the Board (iii) changing the renewal deadline to June 30, (iv) expanding the list of violations that would constitute grounds for disciplinary action, and (v) other minor changes.

Background. Pursuant to the periodic review, the Board proposes to make a number of amendments, listed below:

1. Adding a new \$25 fee to the fee schedule in 18VAC115-40-20, for providing verification of certification. Since licenses and certifications issued by the Board can be verified online free of charge, anyone requesting documentation such as a letter or a stamped

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copy of the certification would be required to pay \$25 for this service.

2. Amending the eligibility criteria listed in 18VAC115-40-22 to include "The applicant shall have no unresolved disciplinary action against a health, mental health, or rehabilitation-related license, certificate, or registration in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis." This proposed addition is consistent with recent additions made by the Board to regulations governing other categories of regulants, such as qualified mental health professionals.²

3. Making explicit the requirement that applicants provide "documentation of passage of the examination required by 18VAC115-40-28" as part of the application process (18VAC115-40-25) and replacing "documentation of the applicant's national or out-of-state license in good standing..." with "verification that the applicant's national or out-of-state license or certificate is in good standing ..." to indicate that electronic verification would suffice in lieu of a document.

4. Changing the date of certification expiration to June 30 of each year, instead of January 31. The Board states that this change would make the renewal date consistent across all categories of regulants. Rehabilitation providers, whose certificates are currently due to expire on January 31, 2021, would have until June 30, 2021, to renew it. (18VAC115-40-30)

5. Clarifying the requirements for reinstatement of a certificate by including the following examples of the evidence required to demonstrate continued ability to provide services: certificates of completion of continuing education, verification of practice in another jurisdiction, or maintenance of national certification. (18VAC115-40-35)

6. Allowing change of name in addition to change of address, and allowing rehabilitation providers to submit the new name or address to the Board within 60 days of such change, as opposed to 30. (18VAC115-40-38)

7. Expanding the types of violations that would constitute grounds for disciplinary action. Specifically, the Board seeks to add "attempting to procure, or maintaining" to "procuring a license, certificate or registration by fraud ..." and "mental illness" as a means by which providers may compromise the safety of their clients. The proposed amendments would also add performing functions outside of one's board-certified area of competency, intentional or negligent conduct, failure to cooperate with the Department of Health Professions in an investigation, failure to report evidence of child or elder abuse or neglect, knowingly allowing persons under supervision to jeopardize client safety or practice outside of their area

of responsibility, and generally conducting one's practice in a manner that would be dangerous to the clients or to the public, including engaging in acts to intentionally defraud or deceive clients or the public. (18VAC115-40-50) These additions are consistent with other regulations promulgated by the Board.³

8. Updating the names and current versions of forms associated with this regulation.

Estimated Benefits and Costs. On the whole, the proposed amendments are unlikely to impose a substantive economic burden on regulants, clients, or other entities in the industry. The new verification fee would only affect a small fraction of rehabilitation providers who choose to request such documentation in lieu of online verification, which can be accessed for free. The Board reports having only one or two complaints regarding disciplinary violations in each of the previous two years and does not anticipate that the new violations being added would lead to a significant increase in complaints. Finally, the proposed change in renewal deadlines would not substantively affect the Board financially; the Board currently has a \$1.2 million balance and thus expects to absorb any short-term costs arising from the initial five-month extension of the renewal deadline. All other changes listed are unlikely to have any direct economic consequences and may benefit providers to the extent that they help clarify the requirements.

Businesses and Other Entities Affected. The proposed amendments pertain to rehabilitation providers who are required to have certification and those seeking such certification in Virginia.⁴ There are currently 230 certified rehabilitation providers,⁵ who mainly work in non-profit or clinical settings. No new costs would accrue to them due to the proposed amendments.

Small Businesses⁶ Affected. The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities⁷ Affected.⁸ The proposed amendments are not expected to disproportionately affect particular localities or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1674>

²See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8843>

³ For examples, see <https://law.lis.virginia.gov/admincode/title18/agency115/chapter30/section150/> or <https://law.lis.virginia.gov/admincode/title18/agency115/chapter80/section100/>

⁴Not all rehabilitation providers are required to have Board certification. There is an exemption in the law for "employees or independent contractors

of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603 or (ii) such employees are providing vocational rehabilitation services under § 65.2-603 as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE)."

⁵Data source: Department of Health Professions

⁶Pursuant 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."

⁷"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁸§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) update the requirements for application and reinstatement of the certification, (ii) add a fee for anyone requesting documentation of their certification from the board (iii) change the renewal deadline to June 30, (iv) expand the list of violations that would constitute grounds for disciplinary action, and (v) make clarifications.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination: Processing and initial certification	\$115
Initial certification by endorsement: Processing and initial certification	\$115
Certification renewal	\$65
Duplicate certificate	\$10
<u>Verification of certification</u>	<u>\$25</u>
Late renewal	\$25
Reinstatement of a lapsed certificate	\$125
Replacement of or additional wall certificate	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. Fees shall be paid to the board. All fees are nonrefundable.

**Part II
Requirements for Certification**

18VAC115-40-22. Criteria for eligibility.

A. Education and experience requirements for certification are as follows:

1. Any baccalaureate degree from a regionally accredited college or university or a current registered nurse license in good standing in Virginia; and
2. Documentation of 2,000 hours of supervised experience in performing those services that will be offered to a workers' compensation claimant under § 65.2-603 of the Code of Virginia. Experience may be acquired through supervised training or experience or both. A supervised internship in rehabilitation services may count toward part of the required 2,000 hours. Any individual who does not meet the experience requirement for certification must practice under the supervision of an individual who meets the requirements of 18VAC115-40-27. Individuals shall not practice in an internship or supervisee capacity for more than five years.

B. A passing score on a board-approved examination shall be required.

C. The board may grant certification without examination to applicants certified as rehabilitation providers in other states or by nationally recognized certifying agencies, boards, associations and commissions by standards substantially equivalent to those set forth in the board's current regulation.

D. The applicant shall have no unresolved disciplinary action against a health, mental health, or rehabilitation-related license, certificate, or registration in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-40-25. Application process.

The applicant shall submit to the board:

1. A completed application form;
2. The official transcript or transcripts submitted from the appropriate institutions of higher education;
3. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirement of 18VAC115-40-26. Documentation of supervision obtained outside of Virginia must include verification of the supervisor's out-of-state license or certificate;
4. Documentation of passage of the examination required by 18VAC115-40-28;

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5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

~~5. Documentation of~~ 6. Verification that the applicant's national or out-of-state license or certificate is in good standing where applicable.

18VAC115-40-26. Supervised experience requirement.

The following shall apply to the supervised experience requirement for certification:

1. On average, the supervisor and the supervisee shall consult for two hours per week in group or personal instruction. The total hours of personal instruction shall not be less than 100 hours within the 2,000 hours of experience. Group instruction shall not exceed six ~~members~~ persons in a group.

2. Half of the personal instruction contained in the total supervised experience shall be face-to-face between the supervisor and supervisee. A portion of the face-to-face instruction shall include direct observation of the supervisee-rehabilitation client interaction.

Part IV Renewal and Reinstatement

18VAC115-40-30. Annual renewal of certificate.

Every certificate issued by the board shall expire on ~~January~~ June 30 of each year.

1. To renew certification, the certified rehabilitation provider shall submit a renewal form and fee as prescribed in 18VAC115-40-20.

2. Failure to receive a renewal notice and form shall not excuse the certified rehabilitation provider from the renewal requirement.

18VAC115-40-35. Reinstatement.

A. A person whose certificate has expired may renew it within one year after its expiration date by paying the renewal fee and the late renewal fee prescribed in 18VAC115-40-20.

B. A person who fails to renew a certificate for one year or more shall apply for reinstatement, pay the reinstatement fee and submit evidence regarding the continued ability to perform the functions within the scope of practice of the certification, such as certificates of completion for continuing education, verification of practice in another jurisdiction, or maintenance of national certification.

18VAC115-40-38. Change of name or address.

A certified rehabilitation provider whose name has changed or whose address of record or public address, if different from the address of record, has changed shall submit the name change or new address in writing to the board within ~~30~~ 60 days of such change.

18VAC115-40-50. Grounds for revocation, suspension, probation, reprimand, censure, denial of renewal of certificate; petition for rehearing.

Action by the board to revoke, suspend, decline to issue or renew a certificate, to place such a certificate holder on probation or to censure, reprimand or fine a certified rehabilitation provider may be taken in accord with the following:

1. Procuring, attempting to procure, or maintaining a license, certificate, or registration by fraud or misrepresentation.

2. Violation of, or aid to another in violating, any regulation or statute applicable to the provision of rehabilitation services.

3. The denial, revocation, suspension or restriction of a registration, license, or certificate to practice in another state, or a United States possession or territory or the surrender of any such registration, license, or certificate while an active administrative investigation is pending.

4. Conviction of any felony, or of a misdemeanor involving moral turpitude.

5. Providing rehabilitation services without reasonable skill and safety to clients by virtue of physical, mental, or emotional illness or substance ~~abuse~~ misuse;

6. Conducting one's practice in such a manner as to be a danger to the health and welfare of one's clients or to the public;

7. Performance of functions outside of one's board-certified area of competency;

8. Intentional or negligent conduct that causes or is likely to cause injury to a client;

9. Performance of an act likely to deceive, defraud, or harm the public;

10. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;

11. Failure to report evidence of child abuse or neglect as required by § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required by § 63.2-1606 of the Code of Virginia;

12. Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility; or

13. Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

NOTICE: Forms used in administering the regulation have been 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-40)

~~Application for Certification as a Rehabilitation Provider, Form 1 (rev. 8/07).~~

[Application for Certification as a Rehabilitation Provider \(rev. 5/2018\)](#)

[General Information for Certification as a Rehabilitation Provider \(rev. 7/2011\)](#)

~~Verification of Experience for Rehabilitation Provider Certification, Form 2 (rev. 8/07).~~

~~Rehabilitation Provider Verification of Licensure/Certification (rev. 8/07).~~

~~Licensure/Certification Verification of Out-of-State Supervisor, Form 4 (rev. 8/07 4/18).~~

~~Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate (rev. 8/07 5/18).~~

[Verification of Experience for Rehabilitation Provider Certification \(rev. 5/2018\)](#)

[Out-of-State License or Certification Verification \(4/2018\)](#)

[Licensure/Certification Verification of Out-of-State Supervisor \(4/2018\)](#)

[Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate \(5/2018\)](#)

VA.R. Doc. No. R20-6208; Filed August 12, 2020, 1:54 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (amending 18VAC115-80-10, 18VAC115-80-40, 18VAC115-80-50, 18VAC115-80-70, 18VAC115-80-110; adding 18VAC115-80-35).**

Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 14, 2020.

Effective Date: October 29, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA

23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaimе.һoуlе@dһp.virginia.gov.

Basis: Regulations of the Board of Counseling are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations in accordance with the Administrative Process Act that are reasonable and necessary.

Purpose: The purpose of the registration is to address the lack of oversight for persons who are providing mental health services as trainees. By requiring a person who works as a qualified mental health professional-trainee to be registered by the Board of Counseling, there is accountability for that person's services and for the person who provides supervision for a trainee; this requirement also provides greater protection for the public health and safety and a reduction in the incidents of abuse and fraud in Medicaid-funded programs.

Rationale for Using Fast-Track Rulemaking Process: Current regulations allow for registration as a trainee but do not specify the requirements for registration. However, the board has required anyone who sought to register as a trainee to have the education or licensure requirements for registration as a qualified mental health professional (QMHP) (less the hours of training). Therefore, the proposed regulations do not differ from current practice and should not be controversial.

Substance: The board has adopted regulations to implement registration of persons who are in training to become a qualified mental health professional-adult (QMHP-A) or qualified mental health professional-child (QMHP-C). Amendments for registration as a trainee specify the same education or licensure requirement required to register as a QMHP-A or a QMHP-C.

Issues: The primary advantage for the public of the amendment is more assurance of competency and accountability for persons providing mental health services. There are no disadvantages for the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend 18VAC115-80 Regulations Governing the Registration of Qualified Mental Health Professionals in order to formalize the registration requirements for trainees receiving supervised work experience. Although the Board previously required trainees to be registered, the requirements for registration were not explicitly listed in the regulation. The Board also seeks to amend the definitions of the relevant professional categories and add language addressing unresolved disciplinary actions.

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Background. Chapters 101 and 217 of the 2019 Acts of Assembly added a definition for "Qualified mental health professional-trainee" and directed the Board to promulgate regulations for the registration of trainees undertaking supervised work experience.¹ The regulation currently does not contain a definition or requirements for the registration of trainees. However, both sections 18VAC115-80-40 Requirements for registration as a qualified mental health professional-adult and 18VAC115-80-50 Requirements for registration as a qualified mental health professional-child state that individuals receiving supervised training in order to qualify for professional registration may register with the Board. The Board proposes to add the definition of trainee as adopted by the 2019 Acts of Assembly and replace the current language that offers registration as an option with language that requires registration.

The Board states that trainees who applied for registration have been required to meet all the requirements for professional registration listed under either category – adult or child –except for the work experience portion. Thus, the proposed amendments include the creation of a new section 18VAC115-80-35 Requirements for registration as a qualified mental health professional-trainee, which includes all the educational requirements listed in sections 18VAC115-80-40 and -50, but leaves out all mention of hours of experience.

In practice, qualified mental health professionals, including trainees, primarily work with populations served by the Department of Behavioral Health and Developmental Services or the Department of Corrections. As such, these populations are covered by Medicaid and the services provided to them are reimbursed by the Department of Medical Administrative Services (DMAS). The registration requirement for trainees is intended to increase oversight of trainees and accountability for their services, decrease incidents of abuse and fraud in Medicaid-funded programs, and provide a listing of qualified persons for the purpose of reimbursement by DMAS.

In addition to these amendments, the Board also proposes two changes to the requirements for professional registration under the adult and child categories. First, the Board seeks to specify that applicants shall have no unresolved disciplinary action and that the Board will consider a history of disciplinary action on a case-by-case basis. Second, the Board seeks to clarify that supervised experience obtained prior to meeting the educational requirements shall not be accepted.

Estimated Benefits and Costs. Since the proposed amendments do not increase the educational or other requirements already in place for trainees who apply for registration, the Board states that the proposed changes do not differ from current practice, and would not affect the 2,193 trainees currently registered. Any unregistered trainees who have been working under supervision would now have to pay the \$25 registration fee and demonstrate that they meet the

educational requirements; these costs are unlikely to be substantive in nature. Further, the Board reported that all qualified mental health professionals (including trainees) working with Medicaid patients would have been required to register in order to receive reimbursement from DMAS. To the extent that the registration requirement increases oversight and accountability for trainees and reduces instances of abuse and fraud in the Medicaid program, the proposed amendments would benefit qualified mental health professionals as well as the populations they serve. Amendments relating to unresolved disciplinary actions are unlikely to have any significant impact.

Businesses and Other Entities Affected. The proposed amendments pertain to applicants for professional registration qualified mental health professional-adult, qualified mental health professional-child, and qualified mental health professional-trainee. These individuals primarily work with populations served by the Department of Behavioral Health and Developmental Services or the Department of Corrections.

Small Businesses² Affected. The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities³ Affected.⁴ The proposed amendments are not expected to disproportionately affect particular localities or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

¹See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0101>

²Pursuant 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."

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments implement registration for individuals who are training to become a qualified mental health professional-adult (QMHP-A) or a qualified mental health professional-child (QMHP-C), define and list the

registration requirements for each category, and establish board consideration of disciplinary actions.

Part I
General Provisions

18VAC115-80-10. Definitions.

"Accredited" means a school that is listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website. If education was obtained outside the United States, the board may accept a report from a credentialing service that deems the degree and coursework is equivalent to a course of study at an accredited school.

"Applicant" means a person applying for registration as a qualified mental health professional.

"Board" means the Virginia Board of Counseling.

"Collaborative mental health services" means those rehabilitative supportive services that are provided by a qualified mental health professional, as set forth in a service plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

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

"Face-to-face" means the physical presence of the individuals involved in the supervisory relationship or the use of technology that provides real-time, visual, and audio contact among the individuals involved.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS includes qualified mental health professionals-adult and qualified mental health professionals-child.

"Qualified mental health professional-adult" or "QMHP-A" means a registered QMHP who is trained and experienced in providing mental health services to adults who have a mental illness. A QMHP-A shall provide such services as an

~~employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS~~ a qualified mental health professional who provides collaborative mental health services for adults. A qualified mental health professional-adult shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.

"Qualified mental health professional-child" or "QMHP-C" means a registered QMHP who is trained and experienced in providing mental health services to children or adolescents up to the age of 22 who have a mental illness. A QMHP C shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for children and adolescents up to 22 years of age. A qualified mental health professional-child shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.

"Qualified mental health professional-trainee" means a person who is receiving supervised training to qualify as a qualified mental health professional and is registered with the board.

"Registrant" means a QMHP registered with the board.

18VAC115-80-35. Requirements for registration as a qualified mental health professional-trainee.

A. Prior to receiving supervised experience toward registration as a QMHP-A, an applicant for registration as a QMHP-trainee shall provide a completed application, the fee prescribed in 18VAC115-80-20, and verification of one of the following:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy verified by an official transcript from an accredited college or university;
2. A master's or bachelor's degree in human services or a related field verified by an official transcript from an accredited college;
3. Current enrollment in a master's program in psychology, social work, counseling, substance abuse, marriage and family therapy, or human services with at least 30 semester or 45 quarter hours as verified by an official transcript;
4. A bachelor's degree verified by an official transcript from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field;

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5. Licensure as a registered nurse in Virginia; or

6. Licensure as an occupational therapist.

B. Prior to receiving supervised experience toward registration as a QMHP-C, an applicant for registration as a QMHP-trainee shall provide a completed application, the fee prescribed in 18VAC115-80-20, and verification of one of the following:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy verified by an official transcript from an accredited college or university;

2. A master's or bachelor's degree in a human services field or in special education verified by an official transcript from an accredited college;

3. Current enrollment in a master's program in psychology, social work, counseling, substance abuse, marriage and family therapy, human services, or special education with at least 30 semester or 45 quarter hours as verified by an official transcript;

3. Licensure as a registered nurse in Virginia; or

4. Licensure as an occupational therapist.

C. An applicant for registration as a QMHP-trainee shall have no unresolved disciplinary action against a mental health or health professional license, certification, or registration held in any jurisdiction. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.

D. Registration as a QMHP-trainee shall expire five years from date of issuance.

Part II

Requirements for Registration

18VAC115-80-40. Requirements for registration as a qualified mental health professional-adult.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20;

2. A current report from the National Practitioner Data Bank (NPDB); and

3. Verification of any other mental health or health professional license, certification, or registration ever held in another jurisdiction. An applicant for registration as a QMHP-A shall have no unresolved disciplinary action. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.

B. An applicant for registration as a QMHP-A shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy, as verified by an official transcript, from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in human services or a related field, as verified by an official transcript, from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A bachelor's degree, as verified by an official transcript, from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

5. A licensed occupational therapist with an internship or practicum of at least 500 hours with persons with mental illness or no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-A, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-A until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either onsite or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

~~4. A person receiving supervised training to qualify as a QMHP-A may register with the board. A trainee registration shall expire five years from its date of issuance. Supervised experience obtained prior to meeting the education requirements of subsection B of this section shall not be accepted.~~

18VAC115-80-50. Requirements for registration as a qualified mental health professional-child.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20;
2. A current report from the National Practitioner Data Bank (NPDB); and
3. Verification of any other mental health or health professional license, certification, or registration ever held in another jurisdiction. An applicant for registration as a QMHP-C shall have no unresolved disciplinary action. The board will consider a history of disciplinary action on a case-by-case basis as grounds for denial under 18VAC115-80-100.

B. An applicant for registration as a QMHP-C shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy, as verified by an official transcript, from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;
2. A master's or bachelor's degree in a human services field or in special education, as verified by an official transcript, from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;
3. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or
4. A licensed occupational therapist with an internship or practicum of at least 500 hours with persons with mental illness or no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-C, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of 1,500 hours of experience in providing direct services to individuals as part of a population of children or adolescents with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-C and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-C until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either onsite or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

~~4. A person receiving supervised training to qualify as a QMHP-C may register with the board. A trainee registration shall expire five years from its date of issuance. Supervised experience obtained prior to meeting the education requirements of subsection B of this section shall not be accepted.~~

Part III
Renewal of Registration

18VAC115-80-70. Annual renewal of registration.

All registrants as a QMHP-A or a QMHP-C shall renew their registrations on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-80-20.

18VAC115-80-110. Late renewal and reinstatement.

A. A person whose registration as a QMHP-A or a QMHP-C has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-80-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-80-80.

B. A person who fails to renew registration as a QMHP-A or a QMHP-C after one year or more shall:

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1. Apply for reinstatement;
2. Pay the reinstatement fee for a lapsed registration; and
3. Submit evidence of completion of 20 hours of continuing education consistent with requirements of 18VAC115-80-80.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

VA.R. Doc. No. R21-6194; Filed August 16, 2020, 9:39 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Proposed Regulation

Title of Regulation: 22VAC30-110. Assessment in Assisted Living Facilities (amending 22VAC30-110-10 through 22VAC30-110-50, 22VAC30-110-80 through 22VAC30-110-110).

Statutory Authority: §§ 51.5-131 and 51.5-146 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 13, 2020.

Agency Contact: Paige McCleary, Adult Services and Adult Protective Service Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

Basis: Section 63.2-1804 of the Code of Virginia gives the Department for Aging and Rehabilitative Services (DARS) the responsibility promulgating regulations related to the assessment of individuals for assisted living facility (ALF) placement. Additionally, § 51.5-131 of the Code of Virginia authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the department.

Purpose: This regulatory action ensures that the regulation content is precisely written. Clarity in regulation content is

essential to ensuring that an adult's health and safety needs are most appropriately met.

Substance: The proposed amendments, which are a result of a periodic review of the regulation, update and add new definitions in 22VAC30-110-10. More substantive changes are proposed for 22VAC30-110-30 and 22VAC30-110-90 to clarify assessment and reassessment procedures. The remainder of the proposed amendments are mainly technical or grammatical in nature.

Issues: The primary advantage of the proposed amendments for the public is to clarify language that was unclear, inconsistent, or outdated. Amendments to the regulation clarify, but do not increase, assessors' responsibilities.

The primary advantage of the regulatory action for the agency is to ensure that assessment standards are evenly applied to individuals in need of ALF admission. Consistent standards ensure that adults safety needs are addressed.

There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commissioner of the Department for Aging and Rehabilitative Services (DARS) proposes to: 1) permit the use of video conferencing for assessments when there are hazardous travel conditions or the individual to be assessed is in another state, 2) specify that qualified assessors who are employees of local departments of social services shall enter assisted living facility (ALF) assessments in the case management system designated by DARS, 3) specify that the earliest date that an annual reassessment may be completed is 60 calendar days prior to the annual reassessment due date, 4) require that qualified assessors and case managers make housing options clear, 5) no longer require that qualified assessors and case managers advise public pay individuals of the outcome of the assessment or the annual reassessment orally as well as in writing, and 6) amend other language for improved clarity.

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

Estimated Economic Impact.

Background. The regulation Assessment in Assisted Living Facilities establishes standards regarding initial assessments and annual reassessments of both public pay and private pay individuals who reside in or may wish to reside in ALFs in Virginia. Assessment is defined as "a standardized approach using common definitions to gather sufficient information about an individual applying to or residing in an assisted living facility to determine the need for appropriate level of care and services." The regulation also addresses post-assessment actions, requirements of the ALF staff when they

discharge individuals, and relocation procedures when an ALF closes.

Video conferencing as face-to-face: The regulation requires that all individuals applying to or residing in an ALF be assessed face-to-face. The current regulation does not define face-to-face; but common usage would indicate that this means in person. The Commissioner proposes to define face-to-face as follows:

"Face-to-face" means interacting with an individual in need of an assessment in a manner that enables the qualified assessor or case manager to observe the individual's behavior and ability to perform ADLs [activities of daily living] and IADLs [instrumental activities of daily living]. When the qualified assessor or case manager and individual are unable to be in the same physical space to conduct an assessment due to the individual's location in another state or due to hazardous travel conditions for the qualified assessor or case manager, the use of video conferencing to conduct the assessment shall be permitted. The appropriate qualified assessor or case manager shall review the assessment with the adult within seven working days of admission to the ALF to ensure all assessment information is accurate.

It would be beneficial to not require qualified assessors and case managers to travel in hazardous conditions. Similarly, it would be beneficial to not require qualified assessors and case managers to incur the time, travel, and lodging expenses associated with meeting in the same physical space when the individual is out of state. To the extent that qualified assessors and case managers can make as accurate or close to as accurate assessments as when they are in the same physical space with the individual, the proposal to permit the use of video conferencing in the described circumstances should produce a net benefit.

Electronic case management system: DARS has an electronic case management system. Current DARS policy requires that qualified assessors at local departments of social services enter ALF assessments into the system. The Commissioner proposes to specify this requirement in the regulation. According to DARS staff, not all qualified assessors at local departments of social services have been entering ALF assessments into the system in practice. DARS hopes that including the requirement in regulation will lead to greater compliance.

Having the assessment entered into the system allows for much faster access to the information for staff who are contacted about specific cases. It may take days or weeks for information to be sent from paper copies without the information entered into the system. The significant delays are problematic not just for state government staff, but for families who have contacted staff concerning their affected relatives. No additional information is required for the system beyond that which is already required for the assessments.

The assessors can type the results of their assessments directly into the system via laptop. For those inclined to use their laptops, the requirement produces no cost. For those assessors who prefer to hand write their assessments, typing that information into the system would require some additional time. Given the value of having the information in the case management system, the benefits of the proposal likely outweigh the costs.

Annual reassessment timing: The regulation requires that there be an annual reassessment of individuals who reside in ALFs. The current regulation does not specify when during the year the annual assessment must be conducted. According to DARS, in practice this has been interpreted as within a few days of the anniversary of the initial assessment. The Commissioner proposes to specify in the regulation that "The earliest date that an annual reassessment may be completed is 60 calendar days prior to the annual reassessment due date." According to DARS staff, the intent of this proposal is to clarify that the reassessments may be done up to 60 days prior to their due date, not just within a few days of the due date. Consequently, this allows for greater flexibility.

Clarity of housing options: Section 51-5-160.E of the Code of Virginia states that "At the time of the first or any subsequent annual reassessment, the individual may select supportive housing or an assisted living facility, subject to the evaluation and reassessment of the individual and availability of the selected housing option." The Board proposes to specify that after the annual reassessment has been completed, if the individual still meets either residential or assisted living level of care, the qualified assessor or case manager shall offer the individual the choice, based on availability, of housing options. This proposal does not change what housing options affected individuals may choose but does increase the likelihood that they are aware of the options. Thus it is beneficial. The cost would only be the minimal amount of time it takes for the qualified assessor or case manager to explain the options.

Communicating assessment outcome: The current regulation states that "Assessors shall advise orally and in writing all public pay individuals of the outcome of the assessment or the annual reassessment, including a statement indicating that the local department of social services will notify the individual whether he is eligible to receive the auxiliary grant." The Commissioner proposes to only require that this information be communicated in writing. According to DARS staff there have been problems with misinterpretations of vocal communications. Additionally, verbal communications made during or immediately after assessments are at times overruled by supervisors later. The intent of this proposed change is to reduce the frequency of misunderstandings and the dissemination of conflicting information.

Businesses and Entities Affected. The proposed amendments affect the 563¹ licensed ALFs in the Commonwealth, local

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departments of social services, DARS, individuals who reside in or may wish to reside in ALFs and their families. All or most of the ALFs likely qualify as small businesses.

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

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

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly 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 are unlikely to significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

¹Source: Department for Aging and Rehabilitative Services

Agency's Response to Economic Impact Analysis: The Department for Aging and Rehabilitative Services concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) permit the use of video conferencing for assessments when there are hazardous travel conditions or the individual to be assessed is in another state, (ii) specify that qualified assessors who are employees of local departments of social services shall enter assisted living facility assessments in the case management system designated by the department, (iii) specify that the earliest date that an annual reassessment may be completed is 60 calendar days prior to the annual reassessment due date, (iv) require that qualified assessors

and case managers make housing options clear, (v) no longer require that qualified assessors and case managers advise public pay individuals of the outcome of the assessment or the annual reassessment orally and in writing, and (vi) amend other language for improved clarity.

Part I Definitions

22VAC30-110-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administrator" means the licensee or person designated by the licensee who (†) is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for assisted living facilities ~~and (ii) meets the requirements of 22VAC40-72.~~

"Assessment" means a standardized approach using common definitions to gather sufficient information about an individual applying to or residing in an assisted living facility to determine the need for appropriate level of care and services.

"Assisted living care" means a level of service provided by an assisted living facility to individuals who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. ~~Moderate assistance means dependency in two or more of the activities of daily living.~~ Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" or "ALF" means any ~~public or private ALF that is required to be licensed as an ALF by the Department of Social Services under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, specifically, any~~ congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only

persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Department of Social Services as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual. ~~Assuming responsibility for the well-being of individuals, either directly or through contracted agents, is considered general supervision and oversight.~~

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement the income of an individual who is receiving Supplemental Security Income (SSI) or an individual who would be eligible for SSI except for excess income, and who resides in an ALF ~~with an approved rate, an adult foster care home, or supportive housing setting with an established rate in the annual appropriations act. The total number of individuals within the Commonwealth of Virginia eligible to receive auxiliary grants in a supportive housing setting shall not exceed the number individuals designated in the annual appropriations act and the signed agreement between the department and the Social Security Administration.~~

"Case management" means multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.

"Case management agency" means a public human service agency which employs a case manager or contracts for case management.

"Case manager" means an employee of a public human services agency who is qualified to perform assessments and to develop and coordinate plans of care.

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

"Department designated case management system" means the official state automated computer system that collects and

maintains information on assessments conducted by employees of the local department who meet the definition of qualified assessor.

~~"Dependent" means, for ADLs and instrumental activities of daily living (IADLs), the individual needs the assistance of another person or needs the assistance of another person and equipment or a device to safely complete the activity an ADL or IADL.~~ For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the individual's behavior is aggressive, abusive, or disruptive.

"Discharge" means the process that ends an individual's stay in the ALF.

"Emergency placement" means the temporary status of an individual in an ALF when the individual's health and safety would be jeopardized by ~~not permitting~~ denying entry into the facility until requirements for admission have been met.

"Face-to-face" means interacting with an individual in need of an assessment in a manner that enables the qualified assessor or case manager to observe the individual's behavior and ability to perform ADLs and IADLs.

"Facility" means an ALF.

"Independent physician" means a physician who is chosen by an individual residing in the ALF and who has no financial interest in the ALF, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Instrumental activities of daily living" or "IADLs" means for the purposes of this chapter, meal preparation, housekeeping, laundry, and money management. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

"Medication administration" means for purposes of this chapter, assessing the degree of assistance an individual requires to take medications in order to determine the individual's appropriate level of care.

"Minimal assistance" means dependency in only one ADL or dependency in one or more IADLs as documented on the uniform assessment instrument. Included in this level of services are individuals who are dependent in medication administration as documented on the UAI.

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"Moderate assistance" means dependency in two or more ADLs as documented on the UAI.

"Private pay" means that an individual residing in an assisted living facility ALF is not eligible for benefits under the Auxiliary Grants Program.

"Prohibited conditions" means physical or mental health conditions or care needs as described in § 63.2-1805 of the Code of Virginia. An ALF shall not admit or allow the continued residence of an individual with a prohibited condition. Prohibited conditions include, but are not limited to, an individual who requires maximum physical assistance as documented on the uniform assessment instrument and meets nursing facility level of care criteria as defined in the State Plan for Medical Assistance. Unless the individual's independent physician determines otherwise, an individual who requires maximum physical assistance and meets nursing facility level of care criteria as defined on the State Plan for Medical Assistance shall not be admitted to or continue to reside in an ALF.

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-200 et seq. and 63.2-300 et seq.) of Title 63.2, Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, or hospitals operated by the state under Chapters 6.1 and 9 (§§ 23-50.4 et seq. and 23-62 et seq.) of Title 23 of the Code of Virginia and supported wholly or principally by public funds, including but not limited to funds provided expressly for the purposes of case management.

"Public pay" means that an individual residing in an ALF is eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means a person who is authorized to perform an assessment, reassessment, or change in level of care for an individual who is seeking admission to an ALF or who resides in an ALF. For public pay individuals, a qualified assessor is an employee of a public human services agency who is trained in the completion of the uniform assessment instrument and is authorized to approve placement for an individual who is seeking admission to or residing in an ALF. For private pay individuals, a qualified assessor is staff of the ALF trained in the completion of the uniform assessment instrument or an independent physician or a qualified assessor for public pay individuals.

"Reassessment" means an update of information on the ~~uniform assessment instrument at any time~~ UAI after the initial assessment. In addition to an annual reassessment, a reassessment shall be completed whenever there is a significant change in the individual's condition.

"Residential living care" means a level of service provided by an ALF for individuals who may have physical or mental impairments and require only minimal assistance ~~with the~~

~~activities of daily living. Minimal assistance means dependency in only one ADL or dependency in one or more of the selected IADLs as documented on the uniform assessment instrument. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument.~~ The definition of residential living care includes the services provided by the ALF to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Significant change" means a change in an individual's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an individual who is receiving an auxiliary grant in an ALF who meets the criteria set forth in 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an ADL.

"Uniform assessment instrument" or "UAI" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument that may be used for individuals paying privately ~~to reside in the ALF. Social and financial information that is not relevant because of the individual's payment status is not included on the private pay version.~~

~~"User's Manual: Virginia Uniform Assessment Instrument" means the department designated handbook containing common definitions and procedures for completing the department designated assessment form.~~

"Virginia Department of Medical Assistance Services" or "DMAS" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

Part II Assessment Services

22VAC30-110-20. Individuals to be assessed.

A. All individuals applying to or residing in an ALF shall be assessed face-to-face using the UAI prior to admission, at least annually, and whenever there is a significant change in the individual's condition.

1. When the qualified assessor or case manager and individual are unable to be in the same physical space to

conduct an assessment due to the individual's location in another state or due to hazardous travel conditions for the qualified assessor or case manager, the use of video conferencing to conduct the assessment shall be permitted.

2. The appropriate qualified assessor or case manager shall review the assessment with the adult within seven working days of admission to the ALF to ensure all assessment information is accurate.

B. For private pay individuals, qualified staff of the ALF or an independent physician may complete the UAI. Qualified staff are ALF employees who have successfully completed state approved department designated training course on the UAI for either public or private pay assessments. The ALF maintains documentation of the completed training. The administrator or the administrator's designated representative shall approve and sign the completed UAI for private pay individuals. A private pay individual may request the assessment be completed by a qualified public human services agency assessor. When a public human services agency assessor completes the UAI for a private pay individual, the agency may determine and charge a fee for private pay assessments that may not exceed the amount DMAS reimburses for public pay assessments.

C. For public pay individuals, the UAI shall be completed by a case manager or a qualified assessor to determine the need for residential care or assisted living care services. The assessor is qualified to complete the assessment if the assessor has completed a state approved the department designated training course on the UAI. Assessors who prior to January 1, 2004, routinely completed UAIs as part of their job descriptions may be deemed to be qualified assessors without the completion of the training course. Qualified assessors who may initially authorize ALF services for public pay individuals are employees of:

1. Local departments ~~of social services~~;
2. Area agencies on aging;
3. Centers for independent living;
4. Community services boards or behavioral health authorities;
5. Local departments of health;
6. State facilities operated by the Department of Behavioral Health and Developmental Services;
7. Acute-care hospitals;
8. Department of Corrections; and
9. Independent physicians who have a contract signed provider agreement with DMAS to conduct ALF assessments.

D. For public pay individuals, the ALF shall coordinate with the qualified assessor or case manager to ensure that the UAI

is completed as required. If the individual has not been assessed, the local department ~~of social services eligibility benefits~~ worker shall inform the individual or the individual's legal representative of the need to be assessed ~~by a qualified assessor~~ prior to admission. If the individual has not applied for an auxiliary grant, the qualified assessor ~~or case manager~~ conducting the assessment shall inform the individual or the individual's legal representative of the need to submit an application for an auxiliary grant.

22VAC30-110-30. Determination of services to be provided.

A. The assessment shall be conducted using the UAI ~~that sets forth an individual's care needs. The UAI is designed to be a comprehensive, accurate, standardized, and reproducible assessment of individuals seeking or receiving long term care services.~~ The UAI is comprised of a short assessment and a full assessment. The short assessment is designed to briefly assess the individual's need for appropriate level of care and services and to determine if a full assessment is needed.

B. The following sections of the UAI shall be completed as follows:

1. For private pay individuals, the assessment shall include sections related to identification and background, functional status, which includes ADLs, continence, ambulation, IADLs, medication administration, and behavior pattern. The private pay or public pay UAI may be used.
2. For public pay individuals, the short form of the UAI shall be completed. The short form consists of sections related to identification and background, and functional status (i.e., the first four pages of the UAI), plus sections on medication administration, and behavior pattern. If, upon assessment, it is determined that the individual is dependent in at least two ADLs or is dependent in behavior, then the full assessment shall be completed.
3. For private pay and public pay individuals, the prohibited conditions section shall be completed.

C. The UAI shall be completed within 90 days prior to the date of admission to the ALF. If there has been a significant change in the individual's condition since the completion of the UAI that would affect the admission to an ALF, a new UAI shall be completed as specified in 22VAC30-110-20.

D. When an individual moves to an ALF from another ALF, a new UAI is not required except that a new UAI shall be completed whenever there is a significant change in the individual's condition or the assessment most recent UAI was completed more than 12 months ago.

E. In emergency placements, the UAI shall be completed within seven working days from the date of placement. An emergency placement shall occur only when the emergency is documented and approved by (i) a Virginia local department

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adult protective services worker for public pay individuals or by (ii) a Virginia local department adult protective services worker or independent physician for private pay individuals.

F. The UAI shall be completed annually on all individuals residing in ALFs and whenever there is a significant change in the individual's condition. ~~UAI shall be completed whenever there is a significant change in the individual's condition. All UAIs shall be completed as required by 22VAC30-110-20. The ALF shall provide an area for assessments and reassessment to be conducted that ensures the individual's privacy and protects confidentiality.~~

G. The ALF shall provide an area for assessments and reassessment to be conducted that ensures the individual's privacy and protects confidentiality.

H. At the request of the ALF, the individual residing in the ALF, the individual's legal representative, the individual's physician, the Virginia Department of Social Services, or the local department ~~of social services~~, an independent assessment using the UAI shall be completed to determine whether the individual's care needs are being met in the current ALF. An independent assessment is an assessment that is completed by an entity other than the original assessor. The ALF shall assist the individual in obtaining the independent assessment as requested. If the request is for a private pay individual, the entity requesting the independent assessment shall be responsible for paying for the assessment.

~~H. I.~~ I. The assessor shall consult with other appropriate human service professionals as needed to complete the assessment.

~~J.~~ Qualified assessors who are employees of local departments shall enter ALF assessments in the department designated case management system.

~~I. K.~~ K. DMAS shall reimburse for completion of assessments and authorization of ALF placement for public pay individuals pursuant to this section.

22VAC30-110-40. Discharge.

A. ALF staff shall assist the individual and the individual's legal representative in the discharge or transfer process. For public pay individuals, ALF staff shall provide written notification of the individual's date and place of discharge or of the individual's death to the local department ~~of social services~~ eligibility benefits worker in the jurisdiction responsible for authorizing the auxiliary grant and the qualified assessor or case manager who conducted the most recent assessment. The ALF shall make these notifications at least 14 calendar days prior to the individual's planned discharge or within five calendar days after the individual's death. In the event of an emergency discharge as specified in ~~22VAC40-72-420~~ 22VAC40-73-430, the notification shall be made as rapidly as possible, but must be made by close of ~~business on~~ the day following the emergency discharge.

B. Upon issuing a notice of summary order of suspension to an ALF, the Commissioner of the Virginia Department of Social Services or his designee shall contact the appropriate local department ~~of social services~~ to develop a relocation plan. Individuals residing in an ALF whose license has been summarily suspended pursuant to § 63.2-1709 of the Code of Virginia shall be relocated as soon as possible to reduce the risk to their health, safety, and welfare. New assessments of the individuals who are relocating are not required, pursuant to 22VAC30-110-30 D.

22VAC30-110-50. Authorization of services to be provided.

A. The qualified assessor or case manager is responsible for authorizing public payment to the individual for the appropriate level of care upon admission to and for continued stay in an ALF.

B. The ALF staff shall be knowledgeable of the criteria for level of care in an ALF and are responsible for discharging the individual when the individual does not meet the criteria for level of care in an ALF upon admission or at any later time.

C. The appropriate level of care shall be documented on the UAI, and the UAI shall be completed in a manner consistent with the definitions of ADLs and directions provided in the this chapter. The User's Manual: Virginia Uniform Assessment Instrument as well as the requirements set forth in this chapter is the department-designated handbook containing procedures that may be used in completing the UAI.

D. During an inspection or review, staff from the Virginia Department of Social Services or the local department ~~of social services~~ may initiate a change in level of care for any individual residing in the ALF for whom it is determined that the UAI does not reflect the individual's current status.

22VAC30-110-80. Rating of levels of care on the uniform assessment instrument.

A. The rating of functional dependencies on the UAI shall be based on the individual's ability to function in a community environment.

B. For purposes of this chapter, the following abbreviations shall mean: D = dependent; and TD = totally dependent. Mechanical help means equipment or a device or both are used; human help includes supervision and physical assistance. Asterisks (*) denote dependence in a particular function.

1. Activities of daily living.
 - a. Bathing.
 - (1) Without help
 - (2) Mechanical help only

- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) ~~Is performed~~ Performed by others* (TD)
- b. Dressing.
 - (1) Without help
 - (2) Mechanical help only
 - (3) Human help only* (D)
 - (4) Mechanical help and human help* (D)
 - (5) ~~Is performed~~ Performed by others* (TD)
 - (6) Is not performed* (TD)
- c. Toileting.
 - (1) Without help
 - (2) Mechanical help only
 - (3) Human help only* (D)
 - (4) Mechanical help and human help* (D)
 - (5) Performed by others* (TD)
 - (6) Is not performed* (TD)
- d. Transferring.
 - (1) Without help
 - (2) Mechanical help only
 - (3) Human help only* (D)
 - (4) Mechanical help and human help* (D)
 - (5) ~~Is performed~~ Performed by others* (TD)
 - (6) Is not performed* (TD)
- e. Bowel function.
 - (1) Continent
 - (2) Incontinent less than weekly
 - (3) Ostomy self-care
 - (4) Incontinent weekly or more* (D)
 - (5) Ostomy not self-care* (TD)
- f. Bladder function.
 - (1) Continent
 - (2) Incontinent less than weekly
 - (3) External device, indwelling catheter, ostomy, self-care
 - (4) Incontinent weekly or more* (D)
 - (5) External device, not self-care* (TD)

- (6) Indwelling catheter, not self-care* (TD)
- (7) Ostomy, not self-care* (TD)
- g. Eating/feeding.
 - (1) Without help
 - (2) Mechanical help only
 - (3) Human help only* (D)
 - (4) Mechanical help and human help* (D)
 - (5) Performed by others (includes spoon fed, syringe/tube fed, fed by IV)* (TD)
- 2. Behavior pattern.
 - a. Appropriate
 - b. Wandering/passive less than weekly
 - c. Wandering/passive weekly or more
 - d. Abusive/aggressive/disruptive less than weekly* (D)
 - e. Abusive/aggressive/disruptive weekly or more* (D)
- 3. Instrumental activities of daily living.
 - a. Meal preparation.
 - (1) No help needed
 - (2) Needs help* (D)
 - b. Housekeeping.
 - (1) No help needed
 - (2) Needs help* (D)
 - c. Laundry.
 - (1) No help needed
 - (2) Needs help* (D)
 - d. Money management.
 - (1) No help needed
 - (2) Needs help* (D)
- 4. Medication administration.
 - a. Without assistance
 - b. Administered/monitored by lay person* (D)
 - c. Administered/monitored by professional staff* (D)

22VAC30-110-90. Actions to be taken upon completion of the uniform assessment instrument.

A. Public Actions to be taken upon completion of the uniform assessment instrument for public pay individuals.

- 1. Upon completion of the UAI for initial assessment for admission, a significant change in the individual's

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condition, or the annual reassessment, the case manager or a qualified assessor shall forward to the local department ~~of social services eligibility benefits~~ worker in the appropriate agency of jurisdiction, in the format specified by the department, the effective date of admission or change in level of care. Qualified assessors who are authorized to perform the annual reassessment or a change in level of care for public pay individuals are employees of (i) local departments ~~of social services~~; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards or behavioral health authority; and (v) local departments of health, or an independent physician who has a ~~contract~~ signed provider agreement with DMAS to conduct assessments.

2. ~~The completed~~ A copy of the UAI, the referral to the ~~eligibility local department benefits~~ worker, and other relevant data shall be maintained in the individual's record at the ALF.

3. The annual reassessment shall be completed by the qualified assessor or case manager conducting the initial assessment. If the original assessor is neither willing nor able to complete the assessment and another assessor is not available, the local department ~~of social services~~ where the individual resides ~~in the ALF~~ shall be the assessor, except that individuals who receive services from a community service board or behavioral health authority shall be assessed and reassessed by qualified assessors employed by the community services board or behavioral health authority.

4. The earliest date that an annual reassessment may be completed is 60 calendar days prior to the annual reassessment due date.

5. After the annual reassessment has been completed, if the individual still meets either residential or assisted living level of care, the qualified assessor or case manager shall offer the individual the choice, based on availability, of housing option pursuant to § 51.5-160 of the Code of Virginia.

4. 6. The ALF shall notify the community services board or behavioral health authority when UAIs indicate observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, pursuant to § 63.2-1805 B of the Code of Virginia.

B. ~~For~~ Actions to be taken upon completion of the uniform assessment instrument for private pay individuals, the ALF shall ensure that assessments for all individuals at admission and at subsequent intervals are completed as required in this chapter. The ALF shall maintain the individual's UAI and other relevant data in the individual's ALF record.

22VAC30-110-100. Targeted case management for individuals receiving an auxiliary grant.

A. Targeted case management shall be limited to those individuals who have multiple needs across multiple providers and this coordination is beyond the scope of the ALF. It shall be the responsibility of the qualified assessor or case manager who identifies the individual's need for residential care or assisted living care in an ALF to assess the need for targeted case management as defined in 12VAC30-50-470.

B. A case management agency shall have signed ~~an~~ a provider agreement with DMAS to be reimbursed for the provision of targeted case management for individuals receiving an auxiliary grant.

C. The local department ~~of social services~~ where the individual resides, following admission to an ALF, shall be the case management agency when there is no other qualified case management provider willing or able to provide case management.

D. A qualified case manager shall possess a combination of relevant work experience in human services or health care and relevant education which indicates that the individual possesses the knowledge, skills, and abilities at entry level as defined in 12VAC30-50-470. This must be documented on the case manager's job application form or supporting documentation. When the provider agency is a local department ~~of social services~~, case managers shall meet the qualifications for family services occupational group as specified in 22VAC40-670-20.

Part III Appeals

22VAC30-110-110. Notifications.

~~Assessors~~ Qualified assessors and case managers shall ~~advise orally and in writing~~ provide to all public pay individuals written notice of the outcome of the assessment or the annual reassessment, including a statement indicating that the local department ~~of social services~~ will notify the individual whether he is eligible to receive the auxiliary grant. An individual who is denied an auxiliary grant because the assessor determines that the individual does not meet the care needs for residential level of care has the right to file an appeal with the Virginia Department of Social Services under § 63.2-517 of the Code of Virginia. Notification of the right to appeal will be included in the notice ~~of action~~ provided by the local department ~~of social services~~. A determination that the individual does not meet the criteria to receive targeted case management is an action that is appealable to DMAS in accordance with the provisions of 12VAC30-110.

~~DOCUMENTS INCORPORATED BY REFERENCE (22VAC30-110)~~

~~User's Manual: Virginia Uniform Assessment Instrument (UAI), Commonwealth of Virginia (rev. 7/05)~~

VA.R. Doc. No. R18-5335; Filed August 13, 2020, 11:46 a.m.

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-35. Virginia Independence Program (amending 22VAC40-35-40; repealing 22VAC40-35-70).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 45 CFR 261.22.

Effective Date: October 15, 2020.

Agency Contact: Mark Golden, TANF Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, or email mark.golden@dss.virginia.gov.

Summary:

Pursuant to Chapter 1159 of the 2020 Acts of Assembly, the amendments (i) repeal limitations on Temporary Assistance for Needy Families (TANF) during the period in which the family or adult recipient is ineligible for TANF pursuant to a penalty for failure to comply with benefit eligibility or child support requirements, and (ii) allow for the maximum amount of assistance provided for 120 days that the family would otherwise be eligible to receive, or \$1,500, whichever is greater.

22VAC40-35-40. Diversionary assistance program eligibility criteria.

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;
2. The assistance unit meets TANF requirements specified in § 63.2-617 of the Code of Virginia; and

3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum TANF amount for 120 days that the family would otherwise be eligible to receive, or \$1,500, whichever is greater. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for TANF for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a 12-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 30 days of the date of the receipt of the signed application, whichever occurs first.

22VAC40-35-70. ~~Limitation on TANF benefits.~~ (Repealed.)

~~A. A recipient family is not entitled to an increase in TANF benefits if the mother of such recipient family gives birth to an additional child during the period of the family's eligibility for financial assistance.~~

~~B. Applicants for TANF financial assistance shall receive notice of the provisions of this section at the time of application. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.~~

~~C. The provisions of this section shall not apply to a child born or adopted during the 10 months following the implementation effective date nor to a child born or adopted during the 10 full calendar months following the month in which the initial assistance check is issued.~~

~~D. The provisions of this section shall apply equally to recipient families who adopt a child except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.~~

VA.R. Doc. No. R21-6448; Filed August 20, 2020, 8:21 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of

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Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-450).

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Sharon Stroble, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7037, FAX (804) 726-7132, or email sharon.stroble@dss.virginia.gov.

Summary:

Pursuant to Chapter 938 of the 2020 Acts of Assembly, the amendments conform Standards for Licensed Assisted Living Facilities consistent with the Code of Virginia to add that (i) individualized service plans must be reviewed and updated at least every 12 months or sooner if modifications to the plan are needed due to a significant change in the resident's condition; (ii) any deviation in the individualized service plan must be documented in writing, including a description of the circumstances warranting deviation, the date such deviation will occur, certification that such deviation was provided to the resident or the resident's legal representative, and included in the resident's file; and (iii) in the case of deviations that are made due to a significant change in the resident's condition, the individualized service plan must be signed by an authorized representative of the assisted living facility and the resident or the resident's legal representative.

22VAC40-73-450. Individualized service plans.

A. On or within seven days prior to the day of admission, a preliminary plan of care shall be developed to address the basic needs of the resident that adequately protects his health, safety, and welfare. The preliminary plan shall be developed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident, and, as appropriate, other individuals noted in subdivision B 1 of this section. The preliminary plan shall be identified as such and be signed and dated by the licensee, administrator, or his designee (i.e., the person who has developed the plan), and by the resident or his legal representative.

Exception: A preliminary plan of care is not necessary if a comprehensive individualized service plan is developed, in conformance with this section, on the day of admission.

B. The licensee, administrator, or his designee who has successfully completed the department-approved individualized service plan (ISP) training, provided by a licensed health care professional practicing within the scope

of his profession, shall develop a comprehensive ISP to meet the resident's service needs. State approved private pay UAI training must be completed as a prerequisite to ISP training. An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

1. The licensee, administrator, or designee shall develop the ISP in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons.

2. The plan shall support the principles of individuality, personal dignity, freedom of choice, and home-like environment and shall include other formal and informal supports in addition to those included in subdivision C 2 of this section that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.

3. The plan shall be designed to maximize the resident's level of functional ability.

C. The comprehensive individualized service plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs and date identified based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) fall risk rating, if appropriate; (v) assessment of psychological, behavioral, and emotional functioning, if appropriate; and (vi) other sources;

2. A written description of what services will be provided to address identified needs, and if applicable, other services, and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and time frame for expected outcome;

5. Date outcome achieved; and

6. For a facility licensed for residential living care only, if a resident lives in a building housing 19 or fewer residents, a statement that specifies whether the resident does or does not need to have a staff member awake and on duty at night.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate and establish an agreed upon coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee, administrator, or his designee, (i.e., the person who has developed the plan), and by the resident or his legal

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representative. The plan shall also indicate any other individuals who contributed to the development of the plan, with a notation of the date of contribution. The title or relationship to the resident of each person who was involved in the development of the plan shall be included. These requirements shall also apply to reviews and updates of the plan.

F. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed ~~as the~~ for a significant change of a resident's condition of the resident changes. The review and update shall be performed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals, or other persons.

G. The master service plan shall be filed in the resident's record. A current copy shall be provided to the resident and shall also be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident, except that:

1. There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided.

2. ~~Deviation~~ Any deviation from the plan shall be ~~documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record;~~

- a. Be documented in writing or electronically;
- b. Include a description of the circumstances warranting deviation and the date such deviation will occur;
- c. Certify that notice of such deviation was provided to the resident or the resident's legal representative;
- d. Be included in the resident's file; and
- e. Be signed by an authorized representative of the assisted living facility and the resident or the resident's legal representative if the deviation is made due to a significant change in the resident's condition.

3. The facility may not start, change, or discontinue medications, dietary supplements, diets, medical procedures, or treatments without an order from a physician or other prescriber.

VA.R. Doc. No. R21-6412; Filed August 20, 2020, 8:18 a.m.

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10, 22VAC40-201-105).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

Summary:

The amendments implement the requirements of legislation passed during the 2020 Session of the General Assembly, including (i) Chapters 95 and 732, which codify the voluntary Fostering Futures program that was previously established to provide continuing services and support to youth 18 to 21 years of age who were in foster care upon turning age 18. The regulatory changes include the addition of the voluntary continuing services and support agreement, court review requirements, participant termination, and identification of services and supports; (ii) Chapters 224 and 366, which add fictive kin to the definition of kinship foster care; and (iii) Chapter 562, which requires local boards of social services to request a waiver of training requirements necessary for the approval of a kinship foster parent upon determining that training requirements are a barrier to placement with the kinship foster parent and that such placement is in the child's best interest.

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may

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be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age or, for the purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia, under 21 years of age and meeting the eligibility criteria set forth in § 63.2-919 of the Code of Virginia.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S.

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Virgin Islands, which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Kinship foster parent" means a relative or fictive kin who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 USC §§ 671 and 675) when making decisions regarding extracurricular, enrichment, and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Reasonable and prudent parent standard," in accordance with 42 USC § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Sibling" means each of two or more children having one or more parents in common.

"SSI" means Supplemental Security Income.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services, or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 14 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-105. Foster care for youth 18 to 21 years of age (Fostering Futures program).

A. Foster care services shall be provided to youth who turn 18 years of age while still in foster care on or after July 1, 2016, until they reach 21 years of age if they qualify and have chosen to participate in the Fostering Futures program.

B. Youth who qualify for the Fostering Futures program are those youth who (i) turn 18 years of age on or after July 1, 2016, and were in the custody of a local Virginia department of social services but have not yet turned 21 years of age, including those who were in foster care under an entrustment agreement and (ii) are:

1. Completing secondary education or an equivalent credential;

2. Enrolled in an institution that provides post-secondary or vocational education;

3. Participating in a program or activity designed to promote employment or remove barriers to employment;

4. Employed at least 80 hours a month; or

5. Are incapable of doing any of the activities described in subdivisions 1 through 4 of this subsection due to a medical condition, which incapability is supported by regularly updated information in the program participant's case plan.

C. Fostering Futures program participants are eligible for independent living services as well as placement services; placements in congregate care are not allowable.

D. Entry into the Fostering Futures program is considered a new foster care episode, and the youth shall be evaluated for Title IV-E funding or eligibility upon entering the program.

E. There is no limit to the number of times a youth may exit and reenter the Fostering Futures program prior to his 21st birthday.

F. Youth in foster care who are committed to the Department of Juvenile Justice prior to 18 years of age, turn 18 years of age on or after July 1, 2016, and are not yet 21 years of age, are eligible to enter the Fostering Futures program upon discharge from commitment.

G. To enter the Fostering Futures program, participants and the local department shall enter into a Voluntary Continuing Services and Support Agreement (VCSSA). The VCSSA documents the following:

1. The youth's agreement to voluntarily reenter foster care through self-entrustment.

2. The requirement that the youth continue to meet one of the requirements listed in subsection B of this section and the youth's agreement to provide the local department with information related to verifying compliance, progress, or status or to otherwise provide consent for the local department to receive such information directly.

3. The youth's agreement to participate in service and supports outlined in the foster care plan and transition plan and that the services and supports are to be provided to the youth no later than 30 days after execution of the VCSSA.

4. The youth's legal status as an adult.

5. The youth's agreement to report changes to the worker, be supervised by the local department, reside in a supervised independent living setting, and comply with program requirements and eligibility conditions.

6. An explanation of the voluntary nature of program participation and termination.

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7. The specific conditions that may result in termination by the local department.

8. That the youth agrees to regular contact with the local department.

9. That the youth agrees to timely payment of housing fees and other requirements deemed necessary based on the unique circumstances and needs of the youth related to a specific safety concern.

a. The local department shall explore a variety of options to support the youth in timely payment of housing fees, including reviewing the youth's budget and money management assistance with the youth and discussing with the youth the option to have part of the maintenance payment sent directly to the housing provider.

b. Any additional requirements outlined in the VCSSA shall be related to a specific safety need of the youth.

H. The local department shall petition the juvenile and domestic relations court for a review of the agreement and approval of the youth's case plan no more than 30 days after execution of the VCSSA.

I. The local department shall identify services and supports to be provided to the youth through use of the foster care plan and transition plan. Services and supports to be provided under Fostering Futures shall include where necessary:

1. Medical care through the State Plan for Medical Assistance as long as eligibility is met;

2. Housing, placement, and support in the form of foster care maintenance payments; and

3. Case management services, including resources and services to be provided to the youth to meet the youth's individualized goals. All case plans shall be developed with the youth and, at the youth's option, include up to two members of the case planning team who are selected by the youth.

J. The local department may issue a notice of intent to terminate the youth from the Fostering Futures program due to substantial violations of the VCSSA. When the local department believes the youth is at risk of substantial violation of the VCSSA, efforts shall be made to actively engage the youth in understanding the ramifications of noncompliance and to encourage the youth's compliance. The local department shall provide the youth a notice of the youth's right to appeal the termination decision. Services and supports provided to the youth shall continue for a minimum of 30 days from the date of the appeal notice.

VA.R. Doc. No. R21-6388; Filed August 20, 2020, 8:19 a.m.

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REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-211. Foster and Adoptive Home Approval Standards for Local Departments of Social Services (amending 22VAC40-211-10, 22VAC40-211-20, 22VAC40-211-70, 22VAC40-211-90).**

Statutory Authority: §§ 63.2-217 and 63.2-319 Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Keisha Williams, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 726-7173, or email k.williams@dss.virginia.gov.

Summary:

Pursuant to Chapter 562 of the 2020 Acts of Assembly, and consistent with waiver and foster family home capacity standards as outlined in the Family First Prevention Services Act of 2018 and defined in the Social Security Act, the amendments clarify that (i) local departments of social services (LDSS) must submit a waiver request to the commissioner when it is determined that training requirements are a barrier to placement with a kinship foster parent; (ii) the LDSS may not remove a child from the physical custody of the kinship foster parent during the approval process; (iii) waivers of any non-safety-related approval standard in kinship foster family homes may be made by an LDSS on a case-by-case basis; (iv) a waiver may be granted by LDSS for kinship foster parents for the purpose of approval for training, completion of the mutual family assessment, tuberculosis assessment, screening or tests, and physical examinations for a period not to exceed six months; and (v) the total number of children in foster care in a foster family home must not exceed six, unless specific exemptions apply.

22VAC40-211-10. Definitions.

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

"Adoptive parent" means any provider selected and approved by a parent or a local department for the placement of a child with the intent of adoption.

"Adult" means any person 18 years of age or ~~over~~ older.

"Applicant" means an individual or couple applying to be approved as a foster or adoptive home provider or to provide respite services.

"Background checks" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending charges within or outside the Commonwealth of Virginia, and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information; child abuse and neglect central registry check; and any other requirement as set forth in § 63.2-901.1 of the Code of Virginia.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) an adult who by law, social custom, express or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after the well-being of a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster or adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board of social services that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903, or 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the

body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board of social services where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board of social services or licensed child-placing agency.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"In-service training" means the ongoing instruction received by providers after they complete their preservice training.

"Interstate Compact on the Placement of Children" means a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Kinship foster parent" means ~~an approved~~ a relative provider or fictive kin who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in 42 USC § 675(10)(A) when making decisions regarding extracurricular, enrichment, and social activities.

"Parent" means the birth or adoptive parent of a child.

"Preservice training" means the instruction received by providers during the initial approval process.

"Provider" means an approved foster, adoptive, or kinship foster parent, or an individual approved to provide respite services. Individuals who wish to provide only respite services must meet all standards in this chapter unless there is a noted exception for respite providers.

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"Respite care" means the provision of the service of temporary care for children on an emergency or planned basis for the purposes of providing placement stability, supporting the achievement of timely permanency, and promoting connections to relatives. Respite care services shall not exceed 14 consecutive days.

22VAC40-211-20. Approval of provider homes.

A. When applicants are approved in accordance with the standards of this chapter, they are approved as foster or adoptive providers. The approved provider shall be allowed to choose to provide only foster or adoptive care.

~~B. If the relative provider cannot meet the standards described in this chapter, the local department may, upon its discretion, request a waiver on certain standards in accordance with 22VAC40-211-90. If the waiver is not allowed, the local department shall not approve the home for the placement of children. Providers must meet all standards of approval. Waivers may be granted in order to approve kinship foster parents as outlined in 22VAC40-211-90.~~

C. The standards of this chapter apply to adoptive home providers until the final order of adoption is issued for a specific child. The standards continue to apply after the final order of adoption if the provider wishes to continue as an approved foster care provider.

~~D. Local departments may grant emergency approval of a provider.~~

~~1. Emergency approvals shall include:~~

- ~~a. Completed background checks; and~~
- ~~b. A home visit by the local department prior to or on the day of the placement.~~

~~2. Emergency approvals shall not exceed 60 days.~~

~~3. Emergency approval of a provider may be granted when the placement:~~

- ~~a. Is with a relative;~~
- ~~b. Is with an adult known to the family; or~~
- ~~c. Will facilitate the child remaining in the community.~~

~~E. D.~~ All local department-approved providers shall:

1. Be at least 18 years of age;
2. Agree not to use corporal punishment with the child in their care or allow others to do so and shall sign an agreement to that effect; and
3. Sign a confidentiality agreement indicating that the individual completing the mutual family assessment for the local department explained the confidential nature of the information related to the child in his care and of the requirement to maintain that confidentiality.

~~F. E.~~ If the approval process results in the local department's denial of the application, the local department shall notify the applicant in writing of its decision. A copy of the letter shall be filed in the applicant's record.

22VAC40-211-70. Standards for the home of the provider.

A. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:

1. Space to keep clothing and other personal belongings;
2. Accessible basin and toilet facilities;
3. Safe, comfortable sleeping furnishings;
4. Sleeping space on the first floor of the home for a child unable to use stairs unassisted, other than a child who can easily be carried; and
5. Space for recreational activities.

B. All rooms used by the child shall be heated in winter, dry, and well-ventilated and have appropriate access to exits in case of emergency.

C. Rooms and study space used by the child shall have adequate lighting.

D. The provider and children shall have access to a working telephone in the home.

E. Multiple children sharing a bedroom shall each have adequate space including closet and storage space. Bedrooms shall have adequate square footage for each child to have personal space.

F. Children over the age of two years shall not share a bed.

G. Children over the age of two shall not share a bedroom with an adult unless the local department approves and documents a plan to allow the child to sleep in the adult's bedroom due to documented needs, disabilities, or other specified conditions. Children of any age cannot share a bed with an adult.

H. Children of the opposite sex over the age of three shall not sleep in the same room.

I. Children under age seven or children with significant and documented cognitive or physical disabilities shall not use the top bunk of bunk beds.

J. The home and grounds shall be free from litter and debris and present no hazard to the safety of the child receiving care.

1. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need and the local department requests such an inspection.
2. Possession of any weapons, including firearms, in the home shall comply with federal and state laws and local ordinances. The provider shall store any firearms and other

weapons with the activated safety mechanisms, in a locked closet or cabinet. Ammunition shall be stored in a separate and locked area. The key or combination to the locked closet or cabinet shall be maintained out of the reach of all children in the home.

3. Providers shall ensure that household pets are not a health or safety hazard in accordance with state laws and local ordinances and the local department shall request verification of provider compliance.

4. Providers shall keep cleaning supplies and other toxic substances stored away from food and locked as appropriate. Medications shall be out of reach of children and locked as appropriate. Medications shall be stored separately from food, except those medicines that require refrigeration.

5. Every home shall have an operable smoke detector, the specific requirements of which shall be coordinated through the local fire marshal. If a locality does not have a local fire marshal, the state fire marshal shall be contacted.

6. Every home shall contain basic first aid supplies.

~~K. The number of children in the provider's home shall not exceed eight.~~ No more than six children in foster care may be placed in the home of a provider. Factors to consider in determining capacity include, ~~but are not limited to:~~

1. The physical accommodations of the home;
2. The capabilities and skills of the provider to manage the number of children;
3. The needs and special requirements of the child;
4. Whether the child's best interest requires placement in a certain type of home;
5. Whether any individuals in the home, including the provider's children, requirespecial attention or services of the provider that interfere with the provider's ability to ensure the safety of all children in the home; and
6. Whether the foster care provider is also a child care provider.

L. The number of foster children who may be cared for in a home under subsection K of this section may exceed the numerical limitation in subsection K for any of the following reasons:

1. To allow a parenting youth in foster care to remain with the child of the parenting youth.
2. To allow siblings to remain together.
3. To allow a child with an established meaningful relationship with the family to remain with the family.
4. To allow a family with special training or skills to provide care to a child who has a severe disability.

M. During the approval process, the provider shall develop a written emergency plan that includes, ~~but is not limited to,~~ fire and natural disasters. The plan shall include:

1. How the provider plans to maintain the safety and meet the needs of the child in the provider's home during a disaster;
2. How the provider shall evacuate the home, if necessary, in a disaster; and
3. How the provider shall relocate in the event of a large scale evacuation.

~~M. N.~~ Providers shall arrange for responsible adults to be available who can serve in the caretaker's role in case of an emergency. If the planned or long-term absence of the provider is required, the local department shall be notified of and approve any substitute arrangements the provider wishes to make.

~~N. O.~~ In the event of a large scale evacuation due to a disaster, if the provider cannot reach the local department, the provider shall call the State Child Abuse Hotline to notify the department of the provider's location and contact information.

22VAC40-211-90. Allowing a waiver.

A. The local department may request and the provider may receive a permanent or temporary waiver from the department on a standard if the waiver does not jeopardize the safety and proper care of the child or violate federal or state laws or local ordinances.

~~B. If a provider is granted a waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved. C. Any waivers granted are considered on a case by case basis and must be reviewed on an annual basis by the department. To allow children to be placed with kinship foster parents, temporary waivers may be granted for preservice training, completion of a mutual family assessment, tuberculosis assessment, screening, or tests and physical examinations for a period not to exceed six months. Permanent waivers related to standards for the home of a provider as referenced in 22VAC40-211-70 may be granted to kinship foster parents.~~

C. If a provider is granted a waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved.

D. Any temporary waivers granted are for a period not to exceed six months. Before the end of the six-month period, the kinship foster parent must have completed all requirements that had previously been waived under subsection B of this section.

E. Any permanent waivers granted are considered on a case-by-case basis and must be reviewed on an annual basis by the department.

VA.R. Doc. No. R21-6387; Filed August 20, 2020, 8:22 a.m.

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Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-295. Temporary Assistance for Needy Families (TANF) (amending 22VAC40-295-150).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Mark Golden, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7357, or email mark.golden@dss.virginia.gov.

Summary:

Pursuant to Chapter 1159 of the 2020 Acts of Assembly, the amendments (i) increase the maximum amount of Temporary Assistance for Needy Families-Emergency Assistance (TANF-EA) to \$1,500 and (ii) add eviction prevention as a qualifying circumstance for eligibility.

22VAC40-295-150. TANF-Emergency Assistance (TANF-EA).

A. A family shall be eligible for TANF-EA if all of the following conditions are met:

1. The assistance meets TANF requirements specified in § 63.2-614 of the Code of Virginia.
2. The emergency assistance is necessary to avoid destitution of the child or to provide living arrangements for him in a home.
3. ~~The child's need is the result of a disaster or a fire.~~ The TANF-EA is for eviction prevention or to address needs resulting from a fire or natural disaster.
4. For current TANF recipients, disaster-related needs can be met through TANF-EA in addition to the regular TANF money payment. The TANF-EA payment does not affect the regular TANF money payment. A TANF-EA payment may not be issued, however, to replace money lost by the recipient or for the loss of earnings.

B. The amount of assistance provided shall be up to ~~\$500~~ \$1,500 per emergency occurrence. The amount of the payment is based on immediate needs of the applicant.

VA.R. Doc. No. R21-6449; Filed August 20, 2020, 8:21 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-665. Child Care Program (amending 22VAC40-665-180, 22VAC40-665-530).**

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-611 of the Code of Virginia; 45 CFR 98.11.

Effective Date: October 15, 2020.

Agency Contact: Jennifer Gibbons, Senior Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-6749, or email jennifer.gibbons@dss.virginia.gov.

Summary:

Pursuant to Chapter 936 of the 2020 Acts of Assembly, the amendments require certain child care providers to require employees, applicants for employment, volunteers, or applicants to serve as volunteers to submit to background checks that include a criminal history record information check and sex offender registry check in any state in which the employee, volunteer, or applicant has resided in the preceding five years.

22VAC40-665-180. Caregiver records.

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.
2. Documentation that background checks were completed, including:
 - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
 - (1) Satisfactory results of the fingerprint-based national criminal background check; and
 - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
 - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
 - c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.

d. The individual's sworn statement or affirmation as to whether the individual has ever been:

- (1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or
- (2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

~~e.~~ e. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.

~~e.~~ f. Documentation of subsequent background checks conducted every five years.

3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-190.

22VAC40-665-530. Staff records.

The following records shall be kept for each staff person:

- 1. Name, address, verification of age, and date of employment or volunteering.
- 2. Documentation that background checks were completed, including:
 - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
 - (1) Satisfactory results of the fingerprint-based national criminal background check; and
 - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
 - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
 - c. Results of a criminal history record information check and sex offender registry check from any state in which the person has resided in the preceding five years.

d. The individual's sworn statement or affirmation as to whether the individual has ever been:

- (1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or
- (2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.

~~e.~~ e. The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.

~~e.~~ f. Documentation of subsequent background checks conducted every five years.

3. Tuberculosis screening results.

4. Certifications of first aid and cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

5. Documentation that training required in 22VAC-665-580 has been completed, including the date completed, the total hours of the session, and the names of the trainer and of any sponsoring organization.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-540.

VA.R. Doc. No. R21-6435; Filed August 20, 2020, 8:23 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-665. Child Care Program (amending 22VAC40-665-650).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Jennifer Gibbons, Senior Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-6749, or email jennifer.gibbons@dss.virginia.gov.

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Summary:

Pursuant to Chapters 494 and 495 of the 2020 Acts of Assembly, the amendments conform staff ratios for religious-exempt child day centers participating in the Subsidy Program to § 63.2-1716 of the Code of Virginia so that when a group of children receiving care includes children from different age brackets, the staff-to-child ratio applicable to the youngest child in the group applies to the entire group of children.

22VAC40-665-650. Supervision, ratio, and group size requirements.

A. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following ratio requirements are maintained:

1. For children from birth to the age of 16 months: one staff member for every four children;
2. For children 16 months to two years: one staff member for every five children;
3. For two-year-old children: one staff member for every eight children;
4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children;
5. For children from age of eligibility to attend public school through eight years: one staff member for every 18 children; and
6. For children from nine years through 12 years of age: one staff member for every 20 children.

B. Except during meals or snacks, the designated rest period, evening and overnight sleep time, outdoor play, field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, the vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following group size requirements are maintained at all times:

1. For children from birth to the age of 16 months: the maximum group size is 12 children;
2. For children 16 months to two years: the maximum group size is 15 children;
3. For two-year-old children: the maximum group size is 24 children; and
4. For children from three years to the age of eligibility to attend public school, five years by September 30: the maximum group size is 30 children.

Group size requirements in this section do not apply to children school age eligible through 12 years of age or when a

variance has been granted by the Division of Licensing Programs.

C. Facilities operated by, or under the auspices of, a religious institution and exempt from licensure shall employ supervisory personnel as set forth in § 63.2-1716 of the Code of Virginia and shall ensure the following ratio requirements are maintained:

1. One staff member to four children from ages zero to 16 months;
2. One staff member to five children from ages 16 months to 24 months;
3. One staff member to eight children from ages 24 months to 36 months;
4. One staff member to 10 children from ages 36 months to five years;
5. One staff member to 20 children from ages five years to nine years; and
6. One staff member to 25 children from ages nine years to 12 years.

When a group of children receiving care includes children from different age brackets, the age of the youngest child in the group shall be used to determine the staff-to-children ratio that applies to that group.

D. With the exception of when meals or snacks are served, the designated rest period, evening and overnight sleep time, outdoor play, and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, facilities operated by, or under the auspices, of a religious institution and are exempt from licensure shall ensure the following group size requirements are maintained at all times:

1. For children from birth to two years of age: the maximum group size is 12 children;
2. For children from two years to six years of age: the maximum group size is 30 children; and
3. For children who are six years up to 12 years of age: group size requirements in this section do not apply.

~~Vendors operated by, or under the auspices, of a religious institution must have a staff member present for each age group of children as defined in § 63.2-1716 of the Code of Virginia. Example: one staff must be present for any of the children age birth to 24 months, an additional staff member must be present if any of the children are ages two to six years, and a third staff member must be present if any children are ages six to 12 years.~~

E. The vendor shall develop and implement a written policy and procedure that describes how the vendor will ensure that

each group of children receives care by consistent staff or team of staff members.

F. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

G. When children are in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

H. Children less than 10 years of age shall always be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to ensure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and
2. Staff checks on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);
2. Staff are nearby so that they can provide immediate intervention if needed;
3. There is a system to ensure that staff know where the children are and what they are doing;
4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and
5. Staff provides sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members in the outdoor activity area whenever one or more children are present.

K. Staff shall not allow a child to leave the center unsupervised.

L. For vendors operated by, or under the auspices of, a religious institution and exempt from licensure, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to

children over 16 months of age may be double the number of children to each staff required by subsection C of this section if:

1. The staff person shall be present in the same space as sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection C of this section.

M. For vendors not operated by, or under the auspices of, a religious institution, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by subsection A of this section if:

1. The staff person shall be present in the same space as sleeping children;
2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and
3. An additional person is present to help.

Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection A of this section.

VA.R. Doc. No. R21-6409; Filed August 20, 2020, 8:20 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC40-705. Child Protective Services (amending 22VAC40-705-60, 22VAC40-705-120, 22VAC40-705-130, 22VAC40-705-140).

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Mary Walter, Child Protective Services Program Consultant, Department of Social Services, 801 East

Regulations

Main Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, or email mary.walter@dss.virginia.gov.

Summary:

The amendments implement the requirements of legislation passed during the 2020 Session of the General Assembly, including (i) Chapters 5 and 228, extending the family assessment completion timeframe to 60 days and removing the ability of a local department of social services (LDSS) to extend the completion timeframe for the family assessment; (ii) Chapters 6 and 234, changing the name of the sex trafficking assessment to the human trafficking assessment and allowing an LDSS conducting human trafficking assessments to interview the alleged child victim or any sibling of that child, without the consent of and outside the presence of the child's or the child's sibling's parent, guardian, legal custodian, other person standing in loco parentis, or school personnel; and (iii) Chapter 38, extending the retention time for unfounded Child Protective Services investigations to three years.

22VAC40-705-60. Authorities of local departments.

A. When responding to valid complaints or reports, local departments have the following authorities:

1. To talk to any child suspected of being abused or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.
2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § 63.2-1520 of the Code of Virginia.
3. To take a child into custody on an emergency removal under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.
 - a. A child protective services worker planning to take a child into emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the child protective services worker's part if a supervisor cannot be contacted and the situation requires immediate action.
 - b. When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately as an investigation.
 - c. Any person who takes a child into custody pursuant to § 63.2-1517 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

d. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § 63.2-1520 of the Code of Virginia.

e. When a child in emergency custody is in need of immediate medical or surgical treatment, the local director of social services or his designee may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.

f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.

g. When a child is removed, every effort must be made to obtain an emergency removal order within four hours. Reasons for not doing so shall be stated in the petition for an emergency removal order.

h. Every effort shall be made to provide notice of the removal in person to the parent or guardian as soon as practicable.

i. Within 30 days of removing a child from the custody of the parents or legal guardians, the local department shall exercise due diligence to identify and notify in writing all maternal and paternal grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents) and all parents who have legal custody of any siblings of the child being removed and explain the options they have to participate in the care and placement of the child, subject to exceptions due to family or domestic violence. These notifications shall be documented in the state automated system. When notification to any of these relatives is not made, the local department shall document the reasons in the state automated system.

B. When responding to a complaint or report of abuse or neglect involving the human trafficking of a child, local departments may take a child into custody and maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child has been identified as a victim of human trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) and pursuant to § 63.2-1517 of the Code of Virginia.

1. After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person.

2. The local department shall also notify the Child-Protective Services Unit within the department whenever a child is taken into custody.

3. When a child is taken into custody by a child-protective services worker of a local department pursuant to this subsection, that child shall be returned as soon as practicable to the custody of his parent or guardian. However, the local department shall not be required to return the child to his parent or guardian if the circumstances are such that continuing in his place of residence or in the care or custody of such parent or guardian, or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if the evidence of abuse is perishable or subject to deterioration before a hearing can be held.

4. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia.

C. When conducting a human trafficking assessment pursuant to § 63.2-1506.1 of the Code of Virginia, the local department may interview the alleged child victim or any sibling of that child without the consent and outside the presence of such child's or such child's sibling's parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

22VAC40-705-120. Extensions and suspensions.

A. The local department shall promptly notify the alleged abuser or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the ~~family assessment or~~ investigation pursuant to § 63.2-1505 B 5 ~~or § 63.2-1506 B 3~~ of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. Pursuant to § 63.2-1505 B 5 of the Code of Virginia, when an investigation involving the death of a child or alleged sexual abuse of a child is delayed because of the unavailability of the records, the deadlines shall be suspended. When such unavailability of records occurs, the local department shall promptly notify the alleged abuser or neglector and the alleged victim's parents or guardians that the records are unavailable and the effect of the unavailability on the completion of the investigation. The child protective services worker shall document the notifications and the reason for the suspension in the case record. Upon receipt of the records necessary to make a finding, the local department shall complete the investigation.

C. The subject of the report shall be notified immediately if during the course of completing the family assessment the

situation is reassessed and determined to meet the requirements, as specified in § 63.2-1506 B 7 of the Code of Virginia, to be investigated.

D. The subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation. If a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, pursuant to § 63.2-1516.1 B of the Code of Virginia, no information gathered during a joint investigation with law enforcement shall be released by the local department prior to the conclusion of the criminal investigation unless authorized by the investigating law-enforcement agency or the local attorney for the Commonwealth.

22VAC40-705-130. Reporting of family assessment or investigation conclusions.

A. Unfounded investigation.

1. Pursuant to § 63.2-1514 of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system when disposition is made.

2. The department shall retain complaints or reports with an unfounded disposition in the child abuse and neglect information system to provide local departments with information regarding prior investigations.

3. This record shall be kept separate from the Central Registry and accessible only to the department and to local departments.

4. The record of the investigation with an unfounded disposition shall be purged ~~one year~~ three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in ~~that one year~~ those three years.

5. The individual against whom an unfounded disposition for allegations of abuse or neglect was made may request in writing that the local department retain the record for an additional period of up to two years.

6. The individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

B. Founded investigation.

1. The local department shall report all founded dispositions to the child abuse and neglect information

Regulations

system for inclusion in the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.

2. Identifying information about the abuser or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint.

3. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to 22VAC40-705-110:

a. Eighteen years past the date of the complaint for all complaints determined by the local department to be founded as Level 1.

b. Seven years past the date of the complaint for all complaints determined by the local department to be founded as Level 2.

c. Three years past the date of the complaint for all complaints determined by the local department to be founded as Level 3.

4. Pursuant to § 63.2-1514 A of the Code of Virginia, all records related to founded, Level 1 dispositions of sexual abuse shall be maintained by the local department for a period of 25 years from the date of the complaint. This applies to all investigations with founded dispositions on or after July 1, 2010. This retention timeframe will not be reflected in the Central Registry past the purge dates set out in this subsection.

C. Family assessments.

1. The record of the family assessment shall be purged three years after the date of the complaint or report if there are no subsequent complaints or reports regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in those three years.

2. The individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

D. In all family assessments or investigations, if the individual against whom the allegations of abuse or neglect is involved in any subsequent complaint or report, the information from all complaints or reports shall be maintained until the last purge date has been reached.

22VAC40-705-140. Notification of findings.

A. Upon completion of the investigation or family assessment the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for ~~one year~~ three years unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

c. In accordance with § 32.1-283.1 D of the Code of Virginia when an unfounded disposition is made in an investigation that involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made that the case record will be retained for the longer of ~~12 months~~ three years or until the State Child Fatality Review Team has completed its review of the case.

2. When the abuser or neglector in a founded disposition is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

3. When the abuser or neglector in a founded disposition is a full-time, part-time, permanent, or temporary employee of a school division, the local department shall notify the relevant school board of the founded complaint pursuant to § 63.2-1505 B 7 of the Code of Virginia.

4. The local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education and after all rights to any appeal provided by § 63.2-1526 of the Code of Virginia have been exhausted.

5. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family

assessment the subject of the report shall be notified orally and in writing of the results of the assessment. The child protective services worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse or neglect were made, that the investigation involving their child resulted in an unfounded disposition and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. When the founded disposition of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector and when the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered, or approved family day home, a private or public school, or a children's residential facility, the parent or guardian must be consulted and must give permission for the child's name to be entered into the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

E. Family Advocacy Program of the United States Armed Forces.

1. Pursuant to § 63.2-1503 N of the Code of Virginia, in all investigations with a founded disposition or family assessment that involve an active duty member of the United States Armed Forces or members of his household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglector shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing within 30 days after the administrative appeal rights of the abuser or neglector have been exhausted or forfeited.

2. The military member shall be advised that this information regarding the founded disposition or family assessment is being provided to the Family Advocacy Program representative and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

3. In accordance with § 63.2-105 of the Code of Virginia, when an active duty member of the United States Armed Forces or a member of his household is involved in an investigation, family assessment, or provision of services case, any information regarding child protective services reports, complaints, investigations, family assessments, and follow up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local department determines such release to be in the best interest of the child. In these situations, coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment, and service provision to the military family.

4. When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, any other additional information not prohibited from being released by state or federal law or regulation shall also be provided to the Family Advocacy Program representative when the local department determines such release to be in the best interest of the child.

VA.R. Doc. No. R21-6386; Filed August 20, 2020, 8:20 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SEVENTY (2020)

Addressing the Impact of the Novel Coronavirus (COVID-19) on the Commonwealth's Psychiatric Hospital System

Importance of the Issue

The Commonwealth of Virginia, through the Department of Behavioral Health and Developmental Services, operates eight behavioral health facilities for adults and one for children. Under § 37.2-809.1 of the Code of Virginia, these facilities must admit patients under emergency custody who meet the criteria for temporary detention when no other facility of temporary detention can be identified. Prior to the COVID-19 pandemic, the census of the state-operated psychiatric hospitals averaged 95 percent or over their total bed capacity. Through the month of July 2020, the state-operated psychiatric hospitals experienced an increase in admissions and at times exceeded their operating bed capacity. Several state-operated psychiatric hospitals have experienced the drop-off of patients when there were no beds in the state-operated psychiatric hospital to serve the patients safely. Such drop-offs pose a risk to both patients and staff.

In addition to the increase in census levels, state-operated psychiatric hospitals have seen confirmed cases of COVID-19 in patients and staff. In order to control the spread of the virus within the congregate settings of state-operated psychiatric hospitals, patients with confirmed or suspected diagnoses of COVID-19 must be isolated or quarantined. Isolating and quarantining, however, reduces bed capacity and further exacerbates the pressure on the state-operated psychiatric hospitals to admit patients subject to temporary detention orders after the emergency custody period expires.

While our state-operated psychiatric hospitals provide high quality behavioral health care and treatment, they do not have the capability to manage or to treat medical conditions that require medical interventions. Transferring patients with acute symptoms of COVID-19 that require medical monitoring and intervention or patients with other medical conditions who cannot be managed adequately at the state-operated psychiatric hospitals negatively impacts the health and safety of those patients.

COVID-19 will continue to place increased demands on the Commonwealth's state-operated psychiatric hospitals. Response to the mental health effects of the COVID-19 disaster will require both public and private providers, as well as other agencies involved in the civil commitment process, to work together. We must prioritize the patient's best interests to ensure that each patient receives the requisite care and treatment. We must also ensure that the state-operated psychiatric hospital system continues to operate as a safety net for patients experiencing a mental health crisis.

Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, and in furtherance of Amended Executive Order No. 51, I direct the following:

1. As currently permitted by Chapter 8 of Title 37.2 of the Code of Virginia, when the state-operated psychiatric hospitals are operating at 100% of their total bed capacity, state-operated psychiatric hospitals will not agree to serve as the facility of temporary detention for patients who are not under emergency custody pursuant to § 37.2-808 of the Code of Virginia.
2. Prior to the transfer and transport of a patient subject to a temporary detention order to a state-operated psychiatric hospital, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are strongly encouraged to contact the state-operated psychiatric hospital of temporary detention to ensure that a bed is available for the patient. If the state-operated psychiatric hospital system is at or over total bed capacity, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are encouraged to work with the state-operated psychiatric hospital to delay transportation of the patient until the state-operated psychiatric hospital can provide a bed.
3. Prior to releasing a patient under a temporary detention order for transport to a state-operated psychiatric hospital, providers participating in the State Medicaid Plan must comply with the applicable Criteria for Medical Assessment Prior to Admission to a Psychiatric Hospital, Inpatient Psychiatric or Crisis Stabilization Unit found at <http://www.dbhds.virginia.gov/assets/doc/about/masg/adult-s-medical-and-screening-guidelines-11-5-2018.pdf> and <http://www.dbhds.virginia.gov/assets/doc/about/masg/peds-medical-assessment-and-screening-guidelines-11-5-2018.pdf>. Such providers shall screen patients under emergency custody or temporary detention for COVID-19 in accordance with guidance issued by the Centers for Disease Control and Prevention and the Virginia Department of Health. In addition, with consent of the patient subject to emergency custody or temporary detention, such providers should administer a COVID-19 active infection test prior to the transfer of the patient to a state-operated psychiatric hospital. If no other payment source is available, the Department of Behavioral Health and Developmental Services will reimburse the provider for the cost of the test.
4. Hospitals with emergency rooms that are subject to the federal Emergency Medical Treatment and Labor Act, 42 USC § 1395dd, must ensure that transfers of patients under temporary detention orders to state-operated

psychiatric hospitals are appropriate transfers. Hospitals with emergency rooms should take into account a patient's COVID-19 status and the inability of the state-operated psychiatric hospitals to isolate and treat such patients properly. Doctors in a hospital where a patient is located for emergency custody and the state-operated psychiatric hospital must communicate regarding a patient's COVID-19 status prior to transfer. Law enforcement and alternative transportation providers involved in the transportation of patients under temporary detention orders should work with the hospital where the patient is located for emergency custody and the state-operated psychiatric hospital to ensure that transport occurs only when safe for the patient.

5. Appropriate use of a medical temporary detention order will ensure that patients receive the medical care they need and could help to reduce the census pressures at the state-operated psychiatric hospitals. Section 37.2-1104 of the Code of Virginia provides a medical temporary detention process that should be used in certain circumstances to address and stabilize a patient's medical condition before transfer to a state-operated psychiatric hospital. For patients experiencing intoxication, using the medical temporary detention process, where applicable, may alleviate the need for further psychiatric hospitalization. If a patient undergoing an emergency mental health evaluation has an acute medical condition, including COVID-19 or intoxication, and is incapable of making an informed decision regarding treatment, consideration should be given to whether the criteria for a medical temporary detention order under § 37.2-1104 of the Code of Virginia are met.

6. Every state-operated psychiatric hospital, community services board (CSB), behavioral health authority (BHA), and private inpatient provider licensed by the Department of Behavioral Health and Developmental Services required to participate in the acute psychiatric bed registry under § 37.2-308.1 of the Code of Virginia (Registry) shall update information included in the Registry whenever there is a change in bed availability, but not less than twice daily, to assist in the location of facilities of temporary detention for patients experiencing a mental health crisis.

7. In order to facilitate discharge of patients from state-operated psychiatric hospitals to increase bed capacity, if the responsible CSB or behavioral health authority BHA disagrees with a state-operated psychiatric hospital's identification of a patient as ready for discharge, the CSB/BHA shall document that disagreement in the patient's treatment plan within 72 hours of the state-operated psychiatric hospital's identification. Section 37.2-505(A) (3) of the Code of Virginia governing disagreements related to discharge shall otherwise apply.

Effective Date of this Executive Order

This Executive Order shall be effective until the expiration of Amended Executive Order 51 unless this Order is sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 17th day of August, 2020.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF COUNSELING

Titles of Documents:

[Supervised Experience Requirements for the Delivery of Clinical Services for Professional Counselor Licensure.](#)

[Guidance on Technology-Assisted Counseling and Technology-Assisted Supervision.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

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

DEPARTMENT OF HEALTH PROFESSIONS AND ALL BOARDS

Title of Document: [Requirements Imposed on Hospitals, Other Health Care Institutions and Organizations, and Assisted Living Facilities to Report Disciplinary Actions Against, Allegations of Misconduct by, and Impairment of Certain Health Care Practitioners to the Virginia Department of Health Professions or the Office of Licensure and Certification of the Virginia Department of Health.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

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

BOARD OF PHYSICAL THERAPY

Title of Document: [Approval of a Traineeship.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

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

STATE BOARD OF SOCIAL SERVICES

Title of Document: [Child Care Subsidy Program Guidance Manual.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

Agency Contact: Jennifer Gibbons, Senior Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-6749, or email jennifer.gibbons@dss.virginia.gov.

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Title of Document: [Administrative Human Resources Manual for Local Departments of Social Services Chapter 4: Leave.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

Agency Contact: Lori Schamerhorn, Associate Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7264, or email lori.schamerhorn@dss.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: [Guidelines for the Motor Vehicle Rental and Peer-to-Peer Vehicle Sharing Tax.](#)

Public Comment Deadline: October 14, 2020.

Effective Date: October 15, 2020.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email joseph.mayer@tax.virginia.gov.

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

2020 Annual Report on the Agricultural Stewardship Act

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report on the Agricultural Stewardship Act for the program year April 1, 2019, through March 31, 2020. Copies of this report can be obtained by contacting Katherine Coates at telephone (804) 786-3538 or via email at katherine.coates@vdacs.virginia.gov. The report can also be obtained by accessing the Virginia Department of Agriculture and Consumer Services website at <http://www.vdacs.virginia.gov/conservation-and-environmental-agricultural-stewardship.shtml>. A written request may be sent to Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning, and Research, P.O. Box 1163, Richmond, VA 23218. Copies of the report are available without charge.

STATE AIR POLLUTION CONTROL BOARD

Air State Implementation Revision - Proposed 2017 Base Year Inventory for Precursors to the Pollutant Ozone

Notice of action: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public comment period on a proposed 2017 base year inventory for precursors to the pollutant ozone, which are carbon monoxide (CO), nitrogen oxides (NO_x), and volatile organic compounds (VOC), in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the inventory as a revision to the Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the National Ambient Air Quality Standards (NAAQS) promulgated by the U.S. Environmental Protection Agency.

Purpose of notice: DEQ is seeking comments on the overall 2017 inventory for the Northern Virginia portion of the Metropolitan Washington, DC-MD-VA Ozone Nonattainment Area, which is classified as marginal for the 2015 NAAQS, and consists of the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Public comment period: September 14, 2020, through October 14, 2020. This comment period is in addition to the previously conducted public comment periods of April 27, 2020, through May 27, 2020, and June 22, 2020, through July 22, 2020.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposal consists of a comprehensive inventory of actual emissions from all sources of relevant pollutants for the base year 2017. This inventory, once finalized, will be the basis for any future planning exercises that have as a goal compliance with the 2015 ozone NAAQS. The proposal was prepared by the Metropolitan Washington Air Quality Committee, which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The complete proposal is available at <https://www.mwcog.org/documents/2020/08/12/washington-dc-md-va-2015-ozone-naaqs-nonattainment-area-base-year-2017-emissions-inventory-updated-august-12-2020-air-quality-air-quality-conformity-ozone/>.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed inventory and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. A cover page with the recipient's full mailing address as listed must be part of each fax. Comments must be submitted to the contact person listed. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans and Programs website at <https://www.deq.virginia.gov/Programs/Air/PublicNotices/air-plansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative listed. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA, telephone (804) 698-4249; and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

General Notices/Errata

Contact Information: Doris A. McLeod, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, (804) 698-4249, FAX (804) 698-4178, or email doris.mcleod@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

August 19, 2020

Administrative Letter 2020-06

TO: All Property & Casualty Insurers Licensed to Write Motor Vehicle Insurance on Motor Vehicles

RE: Property Damage Liability Claims Involving Clean-Up, Removal of Vehicles and Debris from Roadways and Property Adjacent to Roadways

The purpose of this administrative letter is to remind insurers licensed to write motor vehicle policies on vehicles principally garaged or used or are issued or delivered in the Commonwealth of their duties with respect to at-fault accidents. The at-fault insurer is responsible for payment of the reasonable costs of clean-up, recovery, and certain towing expenses under the terms of the property damage liability coverage of the motor vehicle policy that requires coverage for "all damages the insured is legally obligated to pay."

If the investigation of the claim indicates that the insured is responsible for the accident, then the insurer of the at-fault vehicle is required to pay under the vehicle's property damage liability coverage the reasonable costs of: (1) removing debris from the roadway, including liquids and other material, (2) removing the at-fault and not-at-fault vehicles from a roadway or from property adjacent to a roadway, and (3) towing not-at-fault vehicles away from the scene of the accident. The cost of removing vehicle accident debris and the cost of removing the at-fault or not-at-fault vehicles from a roadway or from property adjacent to a roadway after an accident are sometimes referred to as "clean up and recovery costs." The at-fault driver is responsible for the clean-up of the roadway and the recovery of vehicles involved in the accident on the roadway and adjacent to the roadway.

These clean-up and recovery costs must also be paid in any claim involving a single-vehicle accident if the driver of the vehicle is at-fault for the accident.

The Bureau of Insurance has received complaints from towing companies that have made claims with the at-fault insurers seeking payment for clean-up and recovery costs, Insurers have denied these third-party claims for many reasons. For example, insurers have refused to pay these costs because (i) the insured's policy does not have towing coverage; (ii) the towing and recovery company does not have a contract with the state or local government; and (iii) they do not have to pay claims from towing and recovery operators. None of

these reasons are adequate justification for denial of these claims.

This administrative letter does not require an insurer to pay for the cost of towing the at-fault vehicle away from the scene of the accident unless that vehicle's policy includes the relevant physical damage coverage.

The Bureau also reminds insurers that if the insurer declines to pay all or any part of a claim for clean-up, recovery, and towing, the insurer is required to issue to the claimant (the insured or a third-party claimant) a written denial letter that includes a reasonable explanation for the denial of all or part of the claim, as required by 14VAC5-400-70 A of the Administrative Code. The Rules Governing Unfair Claims Settlement Practices defines third party claimant as "any person asserting a claim against an insured or a provider filing a claim on behalf of an insured under an insurance policy." See 14VAC5-400-20 of the Virginia Administrative Code. This definition includes towing companies that respond to an accident at the request of state or local authorities for clean-up, recovery, and towing services.

The Bureau notes that each claim must be reviewed and evaluated on its merits. Please direct any questions regarding this administrative letter to Joy Morton, Bureau of Insurance Manager, P&C Market Conduct Section, Bureau of Insurance, telephone (804) 371-9540, (cell) (804) 396-8380, or email joy.morton@scc.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Brahma Inc.

The State Water Control Board proposes to issue a consent special order to Brahma Inc. for alleged violation of the State Water Control Law at 2300 Genito Road, Powhatan, Virginia 23139. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Aree Reinhardt will accept comments by email at aree.reinhardt@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from September 14, 2020, to October 15, 2020.

Proposed Enforcement Action for David Cross

An enforcement action has been proposed for David Cross for violations of the State Water Control Law in York County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 14, 2020, to October 14, 2020.

Proposed Enforcement Action for Christopher and Veronica Drew

An enforcement action has been proposed for Christopher and Veronica Drew for violations of the State Water Control Law in Hampton, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from September 14, 2020, to October 14, 2020.

Proposed Consent Special Order for JMB Investment Company LLC

An enforcement action has been proposed for JMB Investment Company LLC for violations in Scott County, Carroll County, Wythe County, and Nottoway County, Virginia. The State Water Control Board proposes to issue a special order by consent to JMB Investment Company LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from September 14, 2020, to October 14, 2020.

Proposed Consent Order for Lopez Trucking II LLC

An enforcement action has been proposed for Lopez Trucking II LLC for violations of the State Water Control Law and regulations at the Lopez Trucking II LLC facility located in Lorton, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Lopez Trucking II LLC facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 14, 2020, through October 14, 2020.

Proposed Consent Special Order for San-J International Inc.

The State Water Control Board proposes to issue a consent special order to San-J International Inc. for alleged violation of the State Water Control Law at 2880 Sprouse Drive, Henrico, Virginia 23231. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Aree Reinhardt will accept comments by email at

aree.reinhardt@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from September 14, 2020, to October 15, 2020.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

