



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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](http://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; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Rita Davis; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## February 2021 through February 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 ( <b>Monday</b> )	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Initial Agency Notice

**Title of Regulation:** 12VAC5-501. Rules and Regulations Governing the Construction of Migrant Labor Camps.

**Statutory Authority:** § 32.1-211 of the Code of Virginia.

**Name of Petitioner:** Legal Aid Justice Center.

**Nature of Petitioner's Request:** Dear Commissioner Oliver: We write to follow up on our petitions of March 30 and May 6 requesting rulemaking and immediate protection for the Commonwealth's farmworker and migrant worker community during this dire health crisis. We just entered June. We must act now, as many migrant workers are already here, imminently arriving, or slated to arrive in the thousands in the coming months.

The Present and Looming Crisis for Farmworkers in the Commonwealth. As we have noted, migrant workers are plainly essential workers, feeding both Virginians and indeed the world, but they are also highly vulnerable to COVID-19, particularly in light of their lack of access to medical care, health insurance, and personal transportation; their incredibly close-quartered living and working conditions (often working shoulder to shoulder); and their often limited English proficiency (leaving them less likely to have access to testing or treatment). Many workers are also older, adding additional risk factors. Additionally, hundreds of these workers will be located on the Eastern Shore, which has been a hotspot both for Virginia and indeed nationwide. Without further protections, they are left abandoned while they work to feed us.

The Commonwealth has not Enacted Enforceable COVID Protections for Farmworkers. Despite numerous petitions from our office for enforceable regulations and protections for farmworkers, we have not seen anything issued beyond recommendations, many of which are untenable or shift the burden to the workers; none of them can be enforced against an employer who chooses not to follow them. Recommendations plainly do not create enforceable protections for workers. That is: None of VDH's suggestions are mandatory.

Other States Are Proactively Taking Enforceable Measures to Protect Vulnerable Workers. By way of contrast, other state governments, in recognition of the need to treat essential workers as essential, have been implementing measures to protect farmworkers. As we previously noted, in late April and early May in Oregon, temporary regulations were enacted by the Oregon Occupational Safety and Health Administration to require farms to maintain social distancing during work, break and meal periods, and in employer-provided housing and transportation. Oregon also released \$12 million in emergency housing funds, for which a large portion was earmarked for

providing safe housing for migrant and seasonable farmworkers. In Wisconsin, in late April, the Wisconsin Department of Health Services issued an emergency order that mandated agricultural employers to take certain steps to prevent the spread of COVID-19.

The Commonwealth Can and Should Do More to Protect Farmworkers. Although some states have indeed begun to take measures to protect their most vulnerable workers, many been derelict in their duties to these workers. Virginia still has the opportunity to be a leader amongst states to enact enforceable protections. Virginia law grants the State Board of Health additional powers that may be used to protect public health during public health emergencies. Governor Northam declared COVID-19 a communicable disease of public health threat in his state-of-emergency order in March 2020, which has been extended. VDH, moreover, has broad authority to issue orders and special regulations needed to protect public health in emergencies. See § 32.1-13 of the Code of Virginia. It has the authority to issue mandatory requirements for employers to protect farmworkers' health, not just recommendations. VDH additionally has broad oversight over migrant labor camps. See §§ 32.1-203 through 32.1-211 of the Code of Virginia. Thus, pursuant to § 32.1-13 of the Code of Virginia, we again request VDH to promulgate regulations for the following:

1. Requiring Additional COVID-19 Plans Prior to Issuance of License for Migrant Housing. VDH must review and license farmworker housing. In addition to its current checklist, VDH should add additional COVID-19 plans prior to the issuance of any license. 1. Those requirements should include, but not be limited to: (a) Ensuring that employer provided migrant housing sleeping arrangements comply with recommended 6 feet apart social distancing and are highly ventilated. (b) Providing separate living facilities for workers that are over 60 or have underlying health conditions and have these workers work within 6 feet of other workers. (c) Requiring designated quarantine sleeping areas with separate cooking and bathing facilities for quarantined workers. (d) Requiring proof of sufficient sanitizing and handwashing supplies. (e) Requiring proof of sufficient masks for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19. (f) Requiring a designated specific individual responsible for ensuring workers comply with health and sanitation requirements. (g) Requiring a designated specific individual to receive reports from workers who may have COVID-19 symptoms and be able to coordinate and transport such workers to obtain medical services. (h) Requiring a designated specific individual whose sole responsibility is to care for quarantined workers and ensure they have sufficient food, that the quarantine is enforced, and that transportation to medical care is provided.

2. Requiring Employers to Inform Workers about COVID-19 Concerns. In addition to informing workers about the terms and conditions of employment when

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## Petitions for Rulemaking

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workers are still in their hometowns, all persons who are recruiting workers for agricultural and migrant employment in Virginia in 2020 must provide detailed information about the risks of COVID-19. That information should include how employers will protect their safety while transporting, housing, and employing them in the United States. Prospective workers should also be advised that they will not be required to pay for any cleaning and sanitizing products and the agricultural employer will have an approved health plan for all workers that includes regular sanitizing of the housing and vehicles and other communal areas. All prospective H-2A and H-2B employees should also be informed that they will receive health care at no cost should they develop COVID-19 symptoms and need to be tested, and how they will be quarantined if they develop symptoms or test positive.

3. Requiring Employers to Implement COVID-19 Workplace Protections and Plans. Employers must plan work crew activity to ensure proper distancing to avoid unnecessary transmission of the disease at work. Additionally, most H-2A worker housing is located in rural areas, and employers normally bus workers into small towns to purchase groceries and obtain banking and financial services. Sufficient vehicles must be available such that workers are not sitting directly next to other workers and sufficient ventilation exists. Given the recent hoarding of essential supplies and food, it is possible that small grocery stores could run out of such items and leave workers or members of the community vulnerable. Moreover, a busload of 50 to 100 or so H-2 workers all entering stores at busy times for local shoppers could drastically increase the likelihood of spreading COVID-19. Therefore, advance arrangements must be made with these services to avoid creating a scarcity of essential food and supplies at grocery stores and to protect against the spread of the virus in these small communities already stressed by the impacts of this global pandemic.

4. Disallowing Terminations Based on COVID-19. Under no circumstances should growers or their agents be allowed to terminate and send home H-2A and H-2B workers who are sick with or have been exposed to COVID-19.

5. Disallowing Evictions from Employer Housing. H-2A employers (and many H-2B employers) control workers' housing, and have, in the past, revoked workers' access to that housing on short notice. No H-2A or H-2B workers should be evicted or in any way removed from their housing without prior review and approval of the Department of Health (H-2A) and written notification provided to the Mexican Consulate.

6. Ensuring Medical Coverage and Resources for Migrant Workers. All medical treatment and costs for all COVID-19 related treatment and medical expenses should be

covered by the Commonwealth of Virginia, and no worker should be sent home with any COVID-19 symptoms. In order to help stop the spread of COVID-19, all H-2A and H-2B workers need to know their medical treatment and expenses related to COVID-19 will be fully covered during the time they are working and residing in Virginia. This should include assurances that any worker who is tested for COVID-19 will have those costs covered even if the result is negative for COVID-19. A designated hotline in Spanish capable of receiving information or messages 24 hours a day should be established within the Department of Health to allow workers to report potential symptoms and request medical assistance, and the departments should have ready access to COVID-19 testing. Workers' compensation coverage needs to cover H-2A and H-2B workers who contract COVID-19 or must be quarantined due to the virus. These workers would not be exposed to the virus if they had not come to Virginia to perform migrant work.

Conclusion. Legal Aid Justice Center reiterates its petition for prompt rulemaking and emergency, enforceable measures to ensure the protection of all farmworkers, their families and communities, and the residents of the Commonwealth of Virginia, and asks the Commonwealth to support our most vulnerable workers in these harrowing times.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Virginia Registrar of Regulations and will be published on February 1, 2021, and posted to the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Following receipt of all comment on the petition, and within 90 days of February 22, 2021, the matter will be considered by the State Health Commissioner acting on behalf of the State Board of Health or by the State Board of Health in order to decide whether to grant or deny the petition.

Public Comment Deadline: February 22, 2021.

Agency Contact: Kristin Marie Clay, Senior Policy Analyst, Virginia Department of Health, 109 Governor Street, 5th Floor, Richmond, 23219, telephone (804) 864-7474, or email [kristin.clay@vdh.virginia.gov](mailto:kristin.clay@vdh.virginia.gov).

VA.R. Doc. No. PFR21-17; Filed June 5, 2020, 1:02 p.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 21, 2020, to support this decision.

This regulation is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the board will advise the public of the board's regulatory actions. Notice of the board's regulatory actions assists in protecting the public's welfare. The regulation is clearly written and easily understandable.

The board determined this regulation continues to be necessary, as it is required by § 2.2-4007.02 of the Code of Virginia and establishes the mechanisms by which the board will advise the public of the board's regulatory actions. The board has not received any comments or complaints regarding this regulation. The regulation is not complex and is easily understood. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was promulgated in 2008 using the model public participation guidelines issued by the Department of Planning and Budget. No factors have changed since 2008 that necessitate amending this regulation. This regulation places no economic burden on any small business.

Contact Information: Kevin Schmidt, Board Secretary, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Suite 219, Richmond, VA 23219, telephone (804) 786-1346.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-61, Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides for the protection of the animal population in Virginia, which is a major component of the public food supply. Since a safe food supply is imperative for the public health, safety, and welfare, it is important that this regulation stay in place for the continued protection of the public. The regulation is clearly written and easy to understand.

Retaining this regulation as currently written will not have a significant negative impact on small businesses. There is a continued need for this regulation to stay in effect in order to protect livestock and public health. If the regulation is not maintained, then the risk of disease could have a negative impact on small businesses and producers who rely on livestock for the viability of their farms and businesses. This regulation is important for the livestock industry and is consistent with federal laws and regulations regarding interstate movement of animals. The board has not received any complaints from the public regarding this regulation. The regulation is not unnecessarily complicated. Since the last time this regulation was evaluated, there have not been significant changes in technology, economic conditions, or other factors necessitating that this regulation be amended.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483.

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

Horses are an important component of Virginia's animal agriculture industry, and the equine industry is a significant economic sector in Virginia. Equine Infectious Anemia (EIA) is a fatal disease with no treatment. The most effective way to control EIA is through testing, as has been conducted over the last 40 years, during which time the incidence of disease has been dramatically reduced but not eradicated in the United States. This regulation is necessary for the protection of economic welfare of horse owners in Virginia. Since healthy horses are critical for the economic viability of horse owners, it is important that this regulation stay in place. The regulation is clearly written and easy to understand.

Retaining the current regulation will not have a significant negative impact on small businesses. There is a continued need for this regulation to stay in effect in order to protect livestock and public health. If the regulation is not maintained, then the risk of disease could have a negative impact on small businesses and producers who rely on livestock for the viability of their farms and businesses. This regulation is important for the livestock industry and is consistent with federal laws and regulations regarding interstate movement of animals. The board has not received any complaints from the public regarding this regulation. The regulation is not unnecessarily complicated and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the last time this regulation was evaluated, there have not been significant

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## Periodic Reviews and Small Business Impact Reviews

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changes in technology, economic conditions, or other factors that would necessitate amending the regulation.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-80, Requirements Governing the Branding of Cattle in Virginia**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

This regulation is necessary for the protection the economic welfare of Virginia's cattle industry because it provides the structure for the system to regulate cattle brands in Virginia. The cattle industry is a significant economic sector in Virginia. The regulation is clearly written and easy to understand.

Retaining the current regulation will not have a significant negative impact on small businesses. Many farms that have cattle are small businesses, and this regulation facilitates the tracing and identification of cattle and protects farmers against theft and unlawful dealing in cattle. The board has received no complaints from the public regarding this regulation. The regulation is not unnecessarily complicated and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the last time this regulation was evaluated, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending the regulation.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-111, Public and Private Animal Shelters**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

The confinement of animals in animal shelters is intended to protect citizens from potential public health and safety risks associated with free-roaming dogs. Additionally, the regulations requiring confinement of loose animals and a holding period are intended to protect the property rights of individuals, as companion animals are considered personal property under Virginia law. This regulation is clearly written and easily understandable.

Retaining this regulation as currently written will not have a significant negative impact on small businesses. There is a continued need for this regulation to stay in effect in order to protect pet species and public health. The board has received no complaints from the public regarding this regulation. The regulation is not unnecessarily complicated. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. There have not been significant changes in technology, economic conditions, or other factors since this regulation was promulgated that would necessitate any amendments to the regulation.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-190, Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it provides protection to the poultry populations in Virginia, which are important components of the animal agriculture industry. Since a safe food supply and good poultry health is imperative for the public's health, it is important that this regulation stay in place for the continued protection of the public and the poultry populations. Additionally, the poultry industry is a significant economic sector in Virginia. The regulation is clearly written and easy to understand.

Retaining the current regulation will not have a significant negative impact on small businesses. There is a continued need for this regulation to stay in effect in order to protect poultry and public health. If the regulation is not maintained, then the risk of disease could have a negative impact on small businesses and producers who rely on poultry for the viability of their farms and businesses. This regulation is important for the poultry industry and is consistent with federal laws and regulations regarding interstate movement of animals. The board has not received any complaints from the public regarding this regulation. The regulation is not unnecessarily complicated and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the last time this regulation was evaluated, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending the regulation.

Contact Information:Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and



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# Periodic Reviews and Small Business Impact Reviews

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Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-240, Rules and Regulations for Enforcement of the Grain Handlers Law**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 15, 2020, to support this decision.

This regulation protects the economic welfare of grain sellers by ensuring that grain sold to handlers is accurately weighed, graded, and accounted for assuring the fair and equitable treatment of grain sellers. The regulation is clearly written and easily understood by the regulated industry.

The board has determined that this regulation continues to be necessary and should remain in effect without change. The board received one comment regarding the regulation, and the comment supported the regulation. The board has determined that this regulation is not unnecessarily complex and that the complexity of this regulation is not such that it would have an economic impact on small businesses. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The board last conducted a periodic review of the regulation in 2015, and the board has determined that no changes in technology, economic conditions, or other factors have occurred that necessitate amendments to the regulation. The board continues to believe the current regulation is the least burdensome and intrusive alternative for the required regulation of the grain industry.

Contact Information: Olivia Wilson, Deputy Director, Commodity Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2112.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-319, Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 26, 2020, to support this decision.

The regulation outlines clearly written and easily understood best management practices that apiary operators can follow in order to limit their liability. The best management practices in the regulation not only safeguard the apiary operator by limiting the apiary operator's liability, but also protect the public health, safety, and welfare by including certain provisions that are intended to reduce the chances of stinging incidents associated with keeping and maintaining honeybees. The regulation also safeguards honeybee health and can

increase survivability by preventing exposure to environmental stressors and establishing proper management strategies.

The board has determined that this regulation is necessary in order to provide liability protection for those apiary operators who follow the best management practices in 2VAC5-319, Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability. There are no small business impacts, as a person is not required to comply with the provisions of this chapter unless he seeks to limit his liability as provided for in § 3.2-4411.1 of the Code of Virginia.

The board received one complaint in 2017 regarding the regulation. The complainant filed a petition for rulemaking requesting, in part, that the board (i) provide a mechanism to offer public comment regarding the regulation via a regional apiary inspector and (ii) establish provisions for short-term waivers, long-term waivers, and permanent exemptions from the best management practices included in the regulation. On December 7, 2017, the board considered and subsequently denied the petition for rulemaking as Virginia's Beekeeping Law does not provide authority to the board to establish methods for a person to request amendments to the regulation. In addition, § 2.2-4007 of the Administrative Process Act establishes a formal process by which a person can request changes to a regulation. Virginia's Beekeeping Law does not provide authority to the board to amend the regulation to allow for waivers or exemptions to provisions established in the regulation. The best management practices in the regulation are those that reduce risks associated with keeping honeybees and amending the regulation to allow for waivers or exemptions to a voluntary best management practice could provide liability protection for those operations that should not be afforded the limited liability.

The regulation does not overlap, duplicate, or conflict with federal or state laws. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate amendments to this regulation. The board has determined that the regulation is not unnecessarily burdensome or complex, especially considering that apiary operators are not required to comply with this regulation unless they choose to follow the best management practices in order to limit their liability. As such, the board will retain the regulation in effect without change.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-330, Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine**, and determined that this regulation should be retained in its current form. The board is publishing its

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## Periodic Reviews and Small Business Impact Reviews

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report of findings dated October 8, 2020, to support this decision.

This regulation is necessary for the protection of the economic welfare of Virginia's nursery and timber industries because it is intended to prevent or retard the spread of the gypsy moth. If this regulation were not in place, U.S. Department of Agriculture Animal and Plant Health Inspection Service (USDA-APHIS) would issue a federal quarantine over the entire state of Virginia, which would place restrictions on businesses in noninfested areas of Virginia. Many nurseries and timber operations in Virginia are small businesses, and this regulation ensures that businesses in noninfested areas are not subject to the quarantine. The regulation is clearly written and easy to understand.

The board has determined that there is a continued need for this regulation. This regulation requires that nurseries and timber operations located in infested areas obtain inspections and certifications for regulated articles before these articles may be moved from regulated to nonregulated areas. The regulation was last amended in 2017. In the period since this regulation was last amended, there have been no significant changes to technology, economic conditions, or other factors that would necessitate modifications to the regulation. There have been no complaints received from the public regarding this regulation.

The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The board will retain the regulation in effect without change.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-350, Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 7, 2020, to support this decision.

The licensing and bonding of commission merchants and the requirements of this regulation provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. As such, this regulation protects the economic welfare of Virginia tobacco producers. Retaining the regulation represents the least burdensome alternative for commission merchants, while retaining a mechanism to assure tobacco producers that they will be paid. This regulation is clearly written and easily understood.

The board has determined that there is a continued need for this regulation. Tobacco auction warehouses that serve as agents for tobacco farmers on the basis of a fee or commission are required to obtain a license under the Commission Merchants

Law. Many farms that grow tobacco are small businesses, and the licensing and bonding of commission merchants and the requirements of this regulation, by which commission merchants must abide, provide protection to tobacco farmers by assuring prompt and accurate payment for their tobacco. There have been no complaints received regarding this regulation. The only comment received did not recommend any change to this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred since the previous periodic review of this regulation in 2015 that would necessitate modifications to this regulation. The board will retain the regulation in effect without change.

Contact Information: Gary Milton, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-360, Regulations for the Enforcement of the Virginia Commercial Feed Act**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 30, 2020, to support this decision.

Commercial feed purchasers must be able to ensure that animal feed ingredients will not subsequently adulterate food products consumed by humans. As such, this regulation is necessary in order to protect the public's health, safety, and welfare. This regulation is clearly written and easily understood. Currently, the Official Methods of Analysis of AOAC International (2002), 17th edition, is used to determine the standards for the sampling and analysis of commercial feed. While the board is aware that the Association of Official Agricultural Chemists (AOAC) has published a 21st edition, the AOAC methods used for testing and analysis of commercial feed remain unchanged from the 17th edition. Therefore, board will retain the regulation in effect without change.

This regulation establishes labeling requirements with which commercial feed manufacturers must comply. Many commercial feed purchasers are farmers who operate small businesses, and this regulation ensures that commercial feed available for purchase is properly formulated and labeled. The labeling requirements established in this regulation also assist commercial feed purchasers in determining whether a given feed will satisfy the nutritional needs of their animals. There have been no complaints or comments received from the public for this regulation. The regulation is not complex and does not include any unnecessary or overly burdensome requirements with which small businesses must comply. The regulation does

not overlap, duplicate, or conflict with federal or state law or regulation. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate modifications to this regulation since the previous periodic review of this regulation in 2015. The board will retain the regulation in effect without change.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 8, 2020, to support this decision.

This regulation assists in ensuring the quality of fertilizer products available for sale in the Commonwealth, thereby impacting the ultimate quality of crops, human health, the environment, and competition in the marketplace. As such, the regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understood by the regulated industry.

The agency has determined that there is a continued need for this regulation to assist in ensuring the proper oversight of fertilizer sale in the Commonwealth. The agency has not received any complaints from the public concerning this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. In the period since this regulation was last reviewed in 2016, there have been no significant changes in technology, economic conditions, or other factors that necessitate amendments to this regulation.

The agency has determined that the regulation is not unnecessarily burdensome or complex. As such, the board will retain the regulation in effect without change.

Contact Information: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (800) 786-3515.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-480, Regulation Governing the Oxygenation of Gasoline**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated October 7, 2020, to support this decision.

The agency has determined that this regulation, in its current form, remains necessary for the protection of public health, as it is currently used by the Department of Environmental Quality (DEQ) as a part of a federally required air quality management plan for the control of carbon monoxide (CO) in northern Virginia. The regulation is clearly written and easily understood by the individuals and entities affected. Additionally, the regulation is the least burdensome alternative to meet the federally required air quality management plan for the control of CO.

The board has not received any complaints from the public regarding this regulation. This regulation does not place unnecessary burdens on industry and is not overly complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated by periodic review in 2016. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors that would necessitate amending the regulation. In its review, the board has determined this regulation was developed in accordance with the laws relating to the impact of regulations on small businesses and with the goal of minimizing the economic impact on small businesses. The board will retain the regulation in effect without change.

Contact Information: Gary Milton, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-550, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Sausage**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

The regulation is necessary to ensure that the consuming public is able to purchase a product that meets expectations regarding what is considered to be a sausage product. Limits regarding the amount of fat in the product ensure that consumers are able to purchase a sausage product that is not excessively harmful to health, as large amounts of saturated fat have been known to contribute to cardiovascular disease. The regulation is clearly written and easily understandable.

This regulation is still needed because to ensure that sausage products are produced according to and meet minimum acceptable standards relative to product formulation and saturated fat content. Without this regulation, it would be difficult to ensure that sausage products conform to and meet acceptable standards. There have no complaints or comments received relative to this regulation. The regulation is not complex and easily understandable with standards and requirements that are reasonable and easily attainable. Federal

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regulations also provide certain standards for sausage products. However, this regulation is primarily enforced and policed at meat processing facilities that produce and sell wholesale. The subject regulation is typically enforced and applied to sausage products formulated or sold by a food establishment directly to consumers, such as at a retail food store. The regulation establishes specific production standards applicable to retail environments. This regulation was evaluated during a periodic review conducted in 2016. Since that time, there have not been significant changes in technology, economic conditions, or other factors that would render the regulations outdated. Since the regulation is not complex or burdensome and provides for a product standard that consumer find desirable, it will have minimal to no negative economic impact on small businesses.

Contact Information: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-560, Rules and Regulations Pertaining to Labeling and Sale of Infant Formula**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

This regulation is necessary for the protection of the health, safety, and welfare of infants within the Commonwealth as it ensures that they consume infant formula that clearly meets the nutrition requirements for an infant. The regulation is clearly written and easily understandable.

This regulation continues to be necessary because it ensures infant formula produced and sold at retail meets minimum acceptable standards regarding infant formula nutrition. Nutrients contained in infant formula can degrade over time, thus producing an inferior product incapable of meeting the nutritional needs of infants. The regulation also ensures that consumers are informed regarding expiration dates and the quality of the infant formula that they are buying. The board has not received any complaints or comments regarding this regulation. The regulation is written in a form that is not overly complex and is easily understandable by regulators as well as the regulated industry.

Federal regulations also establish mandates for infant formula. However, these mandates are complex and burdensome to the industry and are configured to apply primarily to large infant formula manufacturers participating in significant interstate commerce that are regularly inspected by the U.S. Food and Drug Administration. The subject regulations are typically enforced at both large and small manufacturers participating in both intrastate and interstate commerce as well as at retail food store locations. An attempt to strictly enforce overly complex federal standards at both manufacturers and retail locations within the Commonwealth would likely be overly burdensome

to the industry. Since the last time this regulation was evaluated, there have not been significant changes in technology, economic conditions, or other factors that would render the regulation nonrelevant. This regulation was promulgated with due concerns for industry and has minimal impact on small businesses.

Contact Information: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-570, Rules and Regulations Defining Standards for Grades/Sizes of Shell Eggs**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

The regulation is necessary for the protection of public health because it ensures that consumers are provided egg products that meet specific quality standards. The regulation is clearly written and easily understandable.

The board has determined there is a continued need for this regulation. The regulation provides for eggs that are properly graded in adherence to a specific standard. Additionally, the regulation requires that eggs be produced, distributed, and sold under conditions that are sanitary. The board has not received any complaints or comments regarding this regulation, which is not complex. The regulation is written in a straightforward manner and is easily understandable and enforceable by regulators and the regulated industry. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was evaluated during the periodic review conducted in 2016. Since that time, there have not been significant changes in technology, economic conditions, or other factors that would necessitate amending this regulation. This regulation was promulgated with due concerns for industry and has minimal impact on small businesses. Compliance with the regulations will not require a significant effort by industry. The regulation is not complex, is easily understandable, and will present a minimal financial cost to the industry. Thus, although essential, the regulation will have minimal economic impact on businesses.

Contact Information: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services conducted a periodic review and a small business impact review of **2VAC5-585, Retail Food Establishment Regulations**, and determined that this regulation should be

retained in its current form. The board is publishing its report of findings dated September 8, 2020, to support this decision.

This regulation is applicable to many thousands of retail establishments, all involved in diverse food related activities. The regulation provides specific requirements that are designed to ensure the optimal protection of the public's health, safety, and welfare. The regulation ensures that the consuming public has access to food products that are received, processed, and held in a safe manner and that requirements are in place that help ensure that foodborne illnesses do not occur. The standards are not arbitrary but are based on sound science and practical requirements. The regulation, although comprehensive, is constructed in a manner that is clearly written and easily understandable by regulators and the industry as well as interested citizens.

There is a continued need for this regulation. The regulation ensures that retail food stores meet minimum sanitary requirements and provide safe food products to the citizens of Virginia. The regulation provides effective and practical science-based measures and requirements that are designed to ensure the optimal protection of the public's health, safety, and welfare. The regulation ensures that the consuming public has access to food products that are received, processed, held, and sold in a safe manner. The regulation also provides essential requirements that help to ensure that foodborne illnesses do not occur. The board has not received any complaints regarding the regulation. Although the regulation provides comprehensive measures to ensure the safety of food products at retail food stores, the regulation is not overly complex and is easily understood by regulators, the industry, and the citizens of Virginia. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The regulation was evaluated following the U.S. Food and Drug Administration's (FDA's) publication of the 2017 Model Food Code. The regulation is regularly evaluated and updated as the FDA publishes the Model Food Code every four years. Since the Model Food Code is updated on a regular basis, the model code keeps pace with changes in technology and economic conditions. A regulatory action to amend 2VAC5-585 to reflect the 2017 Model Food Code and 2019 Model Food Code Supplement is currently underway.

The regulation is science based, practical requirements for retail food businesses. The regulation is not overly burdensome and will help ensure the prevention of food borne illnesses. These requirements take into account and minimize the economic impact of the regulations for small businesses.

Contact Information: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899.



## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF JUVENILE JUSTICE

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice conducted a periodic review and a small business impact review of **6VAC35-30, Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs**, and determined that this regulation should be amended to update and clarify the regulation.

The Notice of Intended Regulatory Action to amend 6VAC35-30, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23219, telephone (804) 588-3902, or email [kristen.peterson@djj.virginia.gov](mailto:kristen.peterson@djj.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 **22VAC30-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated January 4, 2021, to support this decision.

The department's public participation guidelines afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the board, including an online public comment forum on the Virginia Regulatory Town Hall, and other specially designated subordinate; and interested persons may be accompanied by and represented by counsel or other representative.

This regulation is clearly written. This regulation meets the criteria set out in Executive Order 14, as amended, July 16, 2018, as it is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

This regulation is needed in order to meet the state requirements under Virginia law (§ 2.2-4007.02 of the Code of Virginia). The board received no complaints or comments

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regarding the need to repeal or amend this regulation, and the regulation is written clearly and is easy to understand. This regulation does not overlap, duplicate, or conflict with any federal or state law or regulation, and was last revised November 30, 2016. As a result of this periodic review, the department has determined that the regulation has no negative economic impact on small business.

Contact Information: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7063.

### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC30-20, Provision of Vocational Rehabilitation Services**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether *this/each* regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to *this/each* regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins February 1, 2021, and ends February 22, 2021.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7063.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF JUVENILE JUSTICE

#### 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 Juvenile Justice intends to consider amending **6VAC35-20, Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities**, and **6VAC35-30, Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs**. The purpose of the proposed action is to update and clarify the regulations to ensure that the agency retains some authority to review plans for applicable local facility projects without subjecting localities to a lengthy process required by the current regulation. The proposed amendments may include (i) repealing provisions that make the regulations applicable to a locality engaged in construction and related local juvenile facility projects, regardless of whether the locality intends to seek state reimbursement for those costs, (ii) establishing in a new chapter a new, separate process for a locality engaging in relevant projects but not seeking reimbursement; (iii) allowing flexibility regarding the deadline for the board's review of certain documents; (iv) allowing for state reimbursement for emergency maintenance projects in accordance with the Appropriation Act; (v) modifying provisions regarding a board-established funding formula to determine construction costs; (vi) clarifying terminology and provisions that are vague or difficult to understand; (vii) removing certain documents incorporated by reference; and (viii) addressing additional areas of concern that arise during the regulatory process.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: §§ 16.1-309.5, 16.1-309.9, 16.1-322.7, and 66-10 of the Code of Virginia.

Public Comment Deadline: March 3, 2021.

Agency Contact: Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23219, telephone (804) 588-3902, or email [kristen.peterson@djj.virginia.gov](mailto:kristen.peterson@djj.virginia.gov).

VA.R. Doc. No. R21-5821; Filed January 7, 2021, 1:20 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### 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 Behavioral Health and Developmental Services intends to consider amending **12VAC35-46, Regulations for Children's Residential Facilities**. The purpose of the proposed action is to align licensing regulations with the American Society of Addiction Medicine Levels of Care Criteria or an equivalent set of criteria to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020). The proposed action incorporates best practices in the department's licensing regulations to promote recovery from the disease of addiction.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Public Comment Deadline: March 3, 2021.

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, TDD (804) 371-8977, or email [john.cimino@dbhds.virginia.gov](mailto:john.cimino@dbhds.virginia.gov).

VA.R. Doc. No. R21-6440; Filed January 8, 2021, 1:32 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The purpose of the proposed action is to comply with Item 318 of Chapter 1289 of the 2020 Acts of Assembly (2020 Appropriation Act) to align the department's licensing regulations with anticipated changes to Medicaid behavioral health regulations in Item 313 of Chapter 1289. The proposed amendments remove provisions that would conflict with newly funded behavioral health services and establish new licensed services for those newly funded behavioral health services that cannot be nested under an existing department license. For most of the department's existing licensed services, including functional family therapy, multisystemic family therapy, intensive outpatient services, partial hospitalization programs, mobile crisis intervention services, 23-hour temporary observation services, crisis stabilization services, and residential crisis stabilization unit services, minimal changes are anticipated in the proposed

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# Notices of Intended Regulatory Action

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action. The existing license requirements for Program for Assertive Community Treatment (PACT) services, however, are inconsistent with the Assertive Community Treatment (ACT) services that will be funded as part of Behavioral Health Enhancement and substantive changes are proposed for the specific licensing regulations for this service to align licensing requirements with ACT service expectations.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Comment Deadline: March 3, 2021.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

VA.R. Doc. No. R21-6076; Filed January 8, 2021, 1:30 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The purpose of the proposed action is to align the licensing regulations with the American Society of Addiction Medicine Levels of Care Criteria (ASAM) or an equivalent set of criteria to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020). The proposed action incorporates best practices to promote recovery from the disease of addiction.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Public Comment Deadline: March 3, 2021.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

VA.R. Doc. No. R21-6439; Filed January 8, 2021, 1:31 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### 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 Funeral Directors and Embalmers intends to consider amending **18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers; 18VAC65-30, Regulations for Preneed Funeral Planning; and 18VAC65-40, Regulations for the Funeral Service Internship Program**. The purpose of the proposed action is to implement Chapter 943 of the 2020 Acts of Assembly and establish the education, examination, and experience required to be issued a license as a funeral director or a license as an embalmer. Applicants will be required to obtain an associate degree in an accredited mortuary science program or complete a program approved by the board. Coursework in embalming will not be required for the funeral director license, and coursework in funeral directing and preneed financing will not be required for the embalmer license. All funeral interns will be required to complete 2,000 hours of supervised experience in the area of funeral practice for which the interns are seeking licensure. Amendments are also necessary for the three types of licenses and scopes of practice, as applicable, throughout 18VAC65-20, 18VAC65-30, and 18VAC65-40.

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

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

Public Comment Deadline: March 3, 2021.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email [fanbd@dhp.virginia.gov](mailto:fanbd@dhp.virginia.gov).

VA.R. Doc. No. R21-6539; Filed January 4, 2021, 6:18 p.m.

### 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, and 18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**. The purpose of the proposed action is to establish (i) the list of drugs and devices that may be initiated by a pharmacist for a patient over 18 years of age and (ii) requirements for notification of a primary care provider, maintenance of patient records, and protection of



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# Notices of Intended Regulatory Action

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patient privacy. The proposed action implements Chapter 731 of the 2020 Acts of Assembly.

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

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

Public Comment Deadline: March 3, 2021.

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](mailto:caroline.juran@dhp.virginia.gov).

VA.R. Doc. No. R21-6488; Filed January 1, 2021, 6:07 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to (i) establish the requirements for registration as a pharmacy technician trainee for a person enrolled in a training program and engaging in tasks that may be delegated to a technician, (ii) specify the certification examinations that are acceptable for registration as a pharmacy technician, (iii) set out the requirement for accreditation of training programs that will become effective on July 1, 2022, and (iv) modify other provisions as applicable to changes in the Code of Virginia pursuant to Chapters 102 and 237 of the 2020 Acts of Assembly.

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

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

Public Comment Deadline: March 3, 2021.

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

VA.R. Doc. No. R20-6513; Filed January 2, 2021, 10:18 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances**. The purpose of the proposed action is to (i) define the term "practitioner" to include nurse practitioners or physician assistants for the purpose of issuance of a limited-use license and (ii) include the allowance for issuance of a limited-use permit for nonprofit facilities for the sale of Schedule VI drugs and devices used in administration of such drugs. The proposed action is pursuant to Chapters 609 and 610 of the 2020 Acts of Assembly.

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

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

Public Comment Deadline: March 3, 2021.

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

VA.R. Doc. No. R21-6380; Filed January 4, 2021, 1:02 p.m.

## BOARD OF PSYCHOLOGY

### 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 Psychology intends to consider amending **18VAC125-20, Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to implement Chapter 1162 of the 2020 Acts of Assembly, which mandates membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact. The proposed amendments (i) add definitions consistent with the compact and (ii) revise the standards of practice and the grounds for disciplinary action to ensure that persons practicing with an E.Passport or temporary authorization to practice in Virginia through the compact are covered by the regulations.

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

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

Public Comment Deadline: March 3, 2021.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

VA.R. Doc. No. R21-6421; Filed January 1, 2021, 6:13 p.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-211, Foster and Adoptive Home Approval Standards for Local Departments of Social Services**. The purpose of the proposed action is to comply with Chapter 336 of the 2019 Acts of Assembly. The proposed amendments add require a local board of social services and a licensed child-placing agency

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## Notices of Intended Regulatory Action

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(LCPA) to provide foster parents with (i) all reasonably ascertainable background, medical, and psychological records of the child prior to placement; (ii) all information relevant to the child's foster care services; and (iii) copies of all documents related to the foster parent, the foster parent's family, and services provided to the foster home on an ongoing basis. The action also requires local boards and LCPAs to notify foster parents of court hearings; scheduled meetings; and decisions made by the court, local board, or LCPA concerning the child's foster care service, changes to the child's case plan, or termination of child's placement in a timely manner. The regulation requires a timely response to requests for information regarding the child's progress after leaving foster care if it is in the child's best interest. The regulation sets forth a dispute resolution process through which a foster parent may contest an alleged violation by the local board or LCPA, including an appeal process for the foster parent.

The agency does not intend to hold a public hearing at the proposed stage.

Statutory Authority: §§ 63.2-217 and 63.2-319 Code of Virginia

Public Comment Deadline: March 3, 2021.

Agency Contact: C. Garrett Jones, Resource Family Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7527, or email [garrett.jones@dss.virginia.gov](mailto:garrett.jones@dss.virginia.gov).

VA.R. Doc. No. R21-6042; Filed January 4, 2021, 10:49 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Fast-Track Regulation

**Title of Regulation: 8VAC20-250. Regulations Governing the Testing of Sight and Hearing of Pupils (amending 8VAC20-250-10).**

**Statutory Authority:** §§ 22.1-253.13:3 and 22.1-273 of the Code of Virginia.

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

**Public Comment Deadline:** March 3, 2021.

**Effective Date:** March 18, 2021.

**Agency Contact:** Dr. Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-8079, or email [samantha.hollins@doe.virginia.gov](mailto:samantha.hollins@doe.virginia.gov).

**Basis:** The board's authority to establish regulations establishing standards for accrediting public schools is established in § 22.1-253.13:3 of the Code of Virginia.

**Purpose:** This regulatory action is necessary to conform regulation to statute. This regulatory action also updates the language used in reference to how the hearing and vision screenings are monitored to reflect current practice. The revisions to 8VAC-20-250-10 protects public health and child welfare as the timely implementation of vision and hearing screening of students ensures that all students have access to effective learning environments. Impaired vision and/or hearing in children can seriously impede learning and contribute to the development of educational, emotional and behavioral problems.

**Rationale for Using Fast-Track Rulemaking Process:** The amendments to 8VAC20-250-10 are mandated to conform with statute. This regulatory action is noncontroversial because its only purpose is to align the regulations with statute.

**Substance:** The 2017 Virginia General Assembly amended § 22.1-273 of the Code of Virginia, related to the timeline and scheduling of vision screenings. The Virginia Department of Education engaged several stakeholders and gathered input and feedback to draft the proposed revisions to the Regulations. Stakeholder groups included Conexus, Lions Club of Virginia, school nurse coordinators, and licensed hearing and vision providers.

Based on the feedback from stakeholders, the proposed revisions to 8VAC-20-250-10 align the chapter with § 22.1-273 of the Code of Virginia regarding the timeline and scheduling of vision screenings and align the hearing screening timeline and scheduling to match that of the required vision screenings. It also updates the language used in reference to how the hearing and vision screenings will be monitored to reflect current practice.

**Issues:** Early discovery through the timely screenings outlined in 8VAC-20-250-10 can prevent or at least alleviate many of these problems and thus be of great benefit to the public, which is an advantage. There are no disadvantages to the public, the agency, or the Commonwealth. These revisions conform regulation to § 22.1-273 of the Code of Virginia.

#### **Department of Planning and Budget Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to specify that: 1) mandatory vision and hearing screening can be conducted in either second or third grade rather than just third grade, and 2) mandatory vision and hearing screening for grades K, 2 or 3, 7, and 10 be scheduled within the first 60 administrative working days of the school year (and could occur at any time during the school year), rather than take place within the first 60 administrative working days of the school year.

**Background.** The current regulation requires that the sight and hearing of pupils in grades K, 3, 7, and 10 be screened within 60 administrative working days of the opening of school. Virginia Code § 22.1-273 as amended by Chapter 312 of the 2017 Acts of Assembly (Chapter 312)<sup>1</sup> specifies that vision be screened in grades K, 2 or 3, 7, and 10. Also, Chapter 312 states that the "screenings may be conducted at any time during the school year; however, the scheduling of such screenings shall be completed no later than the sixtieth administrative working day of the school year." Chapter 312 does not specify the grades or timing within the school year for hearing tests.

**Estimated Benefits and Costs.** Both proposed amendments are potentially beneficial for local school divisions in that there is greater flexibility in when the screenings occur. This may result in fewer disruptions to academics and other activities. Allowing the screening to take place later in the school year may in some cases lead to a later diagnosis of vision or hearing problems than would otherwise occur.

Conversely, screening later in the year may in some cases enable vision or hearing problems that develop after the early part of the school year to be diagnosed sooner than they otherwise would be. Allowing screening to take place in either

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second or third grade, rather than only third grade, may in some cases lead to an earlier diagnosis of vision or hearing problems than would otherwise occur. Conversely, screening in second grade rather than third grade may in some cases result in vision or hearing problems that develop after the second grade being diagnosed later than they otherwise would be.

**Businesses and Other Entities Affected.** The proposed amendments affect the 133 public school divisions in the Commonwealth, as well as their staff and students.

**Small Businesses<sup>2</sup> Affected.** The proposed amendments do not appear to substantively affect small businesses.

**Localities<sup>3</sup> Affected.**<sup>4</sup> The proposed amendments affect all 133 local school divisions, but none disproportionately. The proposed amendments do not introduce costs for local governments.

**Projected Impact on Employment.** The proposed amendments do not appear to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments do not appear to substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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<sup>1</sup>See <http://lis.virginia.gov/cgi-bin/legp604.exe?171 ful CHAP0312>

<sup>2</sup>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."

<sup>3</sup>"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.

<sup>4</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to the Economic Impact Analysis:** The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

**Summary:**

*The amendments align regulation with § 22.1-273 of the Code of Virginia and (i) allow schools to conduct vision and hearing screenings at any time of the school year as long as the scheduling of such screenings is completed no later than the 60th administrative working day of the school year, (ii) provide schools with the option and flexibility to conduct vision and hearing screenings in grade two or three, and (iii) specify that hearing and vision screenings be monitored through the Department of Education's annual data collection process.*

**8VAC20-250-10. Testing of sight and hearing; monitoring.**

~~That sight and hearing of pupils in grades K, 3, 7, and 10 be screened within 60 administrative working days of the opening of school. The principal of each public elementary and secondary school shall cause the vision and hearing of students enrolled in (i) kindergarten, (ii) grade two or three, (iii) grade~~

seven, and (iv) grade 10 to be screened subject to the conditions and exceptions as established in § 22.1-273 of the Code of Virginia. The vision and hearing screen of students shall be scheduled within the first 60 administrative working days of the school year. Whenever a pupil student is found to have any defect of vision or hearing or a disease of the eyes or ears, the principal shall notify the parent or guardian in writing, of such defect or disease. This screening of pupils students will be monitored through the administrative review department's annual data collection process.

VA.R. Doc. No. R21-6179; Filed January 5, 2021, 4:09 p.m.

## Fast-Track Regulation

**Title of Regulation: 8VAC20-730. Regulations Governing the Collection and Reporting of Truancy-Related Data and Student Attendance Policies (amending 8VAC20-730-10, 8VAC20-730-20, 8VAC20-730-30).**

**Statutory Authority: §§ 22.1-16 and 22.1-258 of the Code of Virginia.**

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

**Public Comment Deadline: March 3, 2021.**

**Effective Date: March 18, 2021.**

**Agency Contact: Maribel Saimre, Director, Office of Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2818, or email [maribel.saimre@doe.virginia.gov](mailto:maribel.saimre@doe.virginia.gov).**

**Basis: Section 22.1-16 of the Code of Virginia allows that the "Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." Section 22.1-269 of the Code of Virginia "authorizes and requires the Board of Education to enforce Virginia's compulsory school attendance statutes."**

**Purpose: It is the primary goal of these amendments to align regulation with § 22.1-258 of the Code of Virginia. Students who attend school regularly beginning in kindergarten are more likely to succeed academically. Academic achievement, especially in math, is affected by attendance. Moreover, student nonattendance affects standardized test scores, graduation rates, and dropout rates. The amendments put in place an early identification and intervention process that provides school division personnel additional time to address barriers that disengage a student from school, thus improving school attendance.**

**Rationale for Using Fast-Track Rulemaking Process: In 2018, the Virginia General Assembly amended § 22.1-258 of the Code of Virginia relating to the appointment of attendance officers, notification when a pupil fails to report to school, attendance plan, conference, and court proceedings. The Virginia Department of Education proposes to use the fast-track rulemaking process as the amendments to 8VAC20-730**

align the chapter with the Code of Virginia and therefore are deemed to be noncontroversial.

**Substance:** The substantive changes conform with § 22.1-258 of the Code of Virginia and reflect feedback from school division personnel across the Commonwealth, including expanding the number of days a parent has to respond to a school division's request for information to make decisions on excused versus unexcused absences from three days to five days. Additionally, changes to the regulation reflect a need to remove specific data element specifications and indicate that data will be collected reflective of § 22.1-258 of the Code of Virginia and definitions within 8VAC20-730. Data specifications regarding the collection of unexcused absences will be outlined in a manner prescribed by the Virginia Department of Education.

**Issues:** The proposed amendments pose no disadvantage to the public or the Commonwealth. The proposed amendments will serve to collect daily attendance data and nonattendance data and guide an early identification and intervention process that provides school division personnel additional time to thoughtfully and purposefully remove barriers that disengage a student from school, thus improving school attendance.

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

Summary of the Proposed Amendments to Regulation. Chapters 713 and 753 of the 2018 Acts of Assembly (legislation) amended § 22.1-258 of the Code of Virginia, relating to a pupil's unexcused absences and conferences concerning those absences. In response, the Board of Education (Board) proposes several amendments to 8 VAC 20-730, Regulations Governing Unexcused Absences and Truancy, to match the legislation. Additionally, the Board proposes to: 1) expand the number of days a parent has to provide an excuse for an absence from three days to five days, and 2) remove specific data collection requirements from the regulation.

Background. Prior to the legislation, § 22.1-258 indicated that: 1) an attendance conference is to be scheduled if the pupil has accrued six unexcused absences from school, and 2) the conference is to be held no later than 15 school days after the sixth absence. The legislation amended § 22.1- 258 so the attendance conference is to be scheduled after the seventh unexcused absence, and the conference is to be held no later than 10 school days after the seventh absence. The current regulation reflects the pre-legislation rules. The Board proposes to amend the regulation to match the requirements in the current Code of Virginia.

Section 22.1-258 indicates that the school principal or his designee schedule the conference with the pupil, his parent, and school personnel. The legislation added that the conference is to be held "regardless of whether his parent approves of the conference." To reflect this addition, the Board proposes to add to the regulation:

The principal or principal's designee shall make reasonable efforts to contact the student's parent or parents to attend the attendance conference either in person or via communication technology. If the principal or principal's designee, after reasonable efforts have been made, is unable to contact the student's parent or parents, the conference shall be held regardless of whether the student's parent approves of the conference.

Additionally, the current regulation defines "attendance conference" as including parent(s) and the student. The Board proposes to amend the definition so that it may include the parent(s) and student.

Estimated Benefits and Costs. The current regulation defines "unexcused absence" as: "...an absence where (i) the student misses his scheduled instructional school day in its entirety and (ii) no indication has been received by school personnel within three days of the absence that the student's parent is aware and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration.

The Board proposes to give the parent five days to notify school staff that he or she is aware and supports the absence. Given busy schedules, this is a reasonable accommodation and would be beneficial for parents and students, without producing an apparent cost for schools.

The current regulation also specifies the following data reporting requirements:

Excused and unexcused absences shall be counted for each individual student and shall be reported to the Virginia Department of Education as follows:

1. All excused and unexcused absences as defined in this chapter for each individual student shall be collected.
2. For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason.
3. For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason.
4. For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason.
5. For each student with seven unexcused absences, whether a court referral was made or if proceedings against the parent or parents were initiated and, if not, the reason.

These data reporting requirements do not match post-legislation § 22.1-258. For example, the statutory requirement for scheduling an attendance conference is now after seven unexcused absences, not six. When there is a conflict between statutory requirements and regulatory requirements, the statute prevails. According to the Department of Education, their Office of Education Information Management has sent guidance to the school divisions to collect and report data so that it matches post-legislation § 22.1-258.

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The Board proposes to repeal the language on data collection requirements and instead state that "Data shall be reported to the Virginia Department of Education pursuant to the Code of Virginia § 22.1-258 and 8VAC20-730-20." The Office of Education Information Management would continue to send guidance to the school divisions on how the data is to be collected and sent. This proposal would be beneficial in that the regulation would no longer present misleading information concerning the data to be collected and reported.

**Businesses and Other Entities Affected.** The proposed amendments affect the 132 local school divisions. No school division is disproportionately affected. The proposed amendments do not appear to impose costs.

**Localities<sup>1</sup> Affected<sup>2</sup>.** The proposed amendments affect all Virginia localities. No locality is particularly affected. The proposed amendments do not appear to introduce costs for local governments. Accordingly, no additional funds would be required.

**Projected Impact on Employment.** The proposed amendments do not appear to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendments do not appear to substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

**Adverse Effect on Small Businesses<sup>3</sup>.** The proposed amendments do not appear to adversely affect small businesses.

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<sup>1</sup>"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.

<sup>2</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

<sup>3</sup>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."

**Agency's Response to the Economic Impact Analysis:** The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

**Summary:**

*The amendments (i) increase the number of days a parent has to provide an excuse for an absence from three days to five days; (ii) remove the specific data collection requirements and state that data will be collected based on § 22.1-258 of the Code of Virginia; and (iii) update the requirements for the post-absence conference to align with statute.*

## **8VAC20-730-10. Definitions.**

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

"Attendance conference" means a face-to-face meeting, or an interaction that is conducted through the use of communication technology, ~~at a minimum, scheduled with the student, parent, and school personnel~~ after the ~~sixth unexcused~~ seventh unexcused absence. ~~The attendance conference shall be held no later than 10 school days after the 10th unexcused absence among school staff.~~ The attendance conference is held by a multi-disciplinary team and may include the parents, and student. The conference may include community representatives to participate in resolving issues related to nonattendance and revisions to the current attendance plan if necessary.

"Attendance plan" means a plan developed jointly by a school representative, such as a school principal or ~~his the principal's designee or attendance officer~~; parent; and student to resolve the student's nonattendance and engage the student in regular school attendance. The plan shall identify reasons for nonattendance and academic, social, emotional, and familial barriers that impede daily attendance along with positive strategies to address such reasons and ~~impedances~~ impediments and support regular attendance. This plan may include school-based activities or suggested referrals to community supports, or both.

"Court referral" means filing a complaint ~~to~~ with the Juvenile and Domestic Relations Court after the ~~student's seventh unexcused absence~~ multi-disciplinary team has held an attendance conference and attempted interventions to address the student's continued nonattendance. Documentation of interventions regarding the student's unexcused absences, such as copies of the attendance plan and documentation of conference meetings, and compliance with § 22.1-258 of the Code of Virginia will be provided to the intake worker.

"Excused absence" means an absence of an entire assigned instructional school day with a reason acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school administration with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. ~~Expelled and suspended~~ Suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension ~~or expulsion may shall be considered excused~~ recorded in compliance with 8VAC20-730-30 for the period of the suspension ~~or expulsion~~.

"Instructional school day" means the length of a regularly scheduled school day for an individual student.

"Multi-disciplinary team" means a ~~school-based~~ conference team that may be convened to review student records and to participate in prevention, early intervention, and provision of support services to address unexcused absences, including school-based case management. These services should address academic, social, emotional, and familial issues in order to improve regular school attendance. Team members may include, ~~but are not limited to,~~ the following: an administrator, school counselor, social worker or psychologist, student assistance specialist, special education and ~~regular~~ general education teacher, ~~and~~ attendance officer, and community representatives.

"Parent" means the parent or parents, guardian or guardians, legal custodian or legal custodians, or other person or persons having legal control or charge of the student.

"Truancy" means the act of accruing one or more unexcused absences.

"Unexcused absence" means an absence where (i) the student misses his scheduled instructional school day in its entirety and (ii) no indication has been received by school personnel within ~~three~~ five days of the absence that the student's parent is aware and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration. The school administration may change an unexcused absence to an excused absence when it determines that the parent has provided an acceptable reason meeting criteria for the student's absence or there are extenuating circumstances.

### **8VAC20-730-20. Unexcused absences intervention process and responsibilities.**

A. Each local school board shall provide guidance regarding what would constitute an excused absence in order to address when the explanation provided by the parent will be determined to be reasonable and acceptable.

B. Each local school board shall develop procedures to ensure that appropriate interventions will be implemented when a student engages in a pattern of absences less than a full day, the explanation for which, if it were a full-day absence, would not be deemed an excused absence.

C. The following intervention steps shall be implemented to respond to unexcused absences from school and to engage students in regular school attendance.

1. Whenever a student fails to report to school on a regularly scheduled school day and no information has been received by school personnel that the student's parent is aware of and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration, the school principal or designee, attendance officer, or other school personnel or volunteer will notify the parent by phone or email or any other electronic means to obtain an

explanation. The school staff shall record the student's absence for each day as "excused" or "unexcused." Early intervention with the student and parent or parents shall take place for repeated unexcused absences.

2. When a student has received five unexcused absences, the school principal or designee ~~or the attendance officer~~ shall make a reasonable effort to ensure that direct contact is made with the parent. The parent shall be contacted in a face-to-face conference, by telephone, or through the use of other communication devices. During the direct contact with the parent and the student (if appropriate), reasons for nonattendance shall be documented and the consequences of nonattendance explained. An attendance plan shall be made with the student and parent or parents to resolve the nonattendance issues. The student and parent may be referred to a school-based multi-disciplinary team for assistance implementing the attendance plan and case management.

3. ~~The~~ When the student accrues a seventh unexcused absence, the school principal or principal's designee ~~or the attendance officer~~ shall schedule a face-to-face attendance conference, or an interaction that is conducted through the use of communication technology, ~~within 10 school days from the date of the student's sixth unexcused absence for the school year.~~ The attendance conference must be held within ~~45~~ 10 school days from the date of the ~~sixth unexcused~~ 10th unexcused absence. The principal or principal's designee shall make reasonable efforts to contact the student's parent or parents to attend the attendance conference either in person or via communication technology. If the principal or principal's designee, after reasonable efforts have been made, is unable to contact the student's parent, the conference shall be held regardless of whether the student's parent approves of the conference. The conference shall include the ~~parent, student, principal or principal's designee and school personnel (which may be a representative or representatives from the multi-disciplinary team )~~ and may include community service providers.

4. The multi-disciplinary team shall monitor the student's attendance and, as necessary, meet again to address concerns and plan additional interventions if the student's attendance does not improve. If additional meetings are necessary, the principal or principal's designee shall make reasonable efforts to contact the student's parent or parents and schedule a face-to-face meeting, or an interaction that is conducted through the use of communication technology. If the principal or principal's designee, after reasonable efforts have been made, is unable to contact the student's parent, the conference shall be held regardless of whether the student's parent approves of the conference.

5. In circumstances in which the parent is intentionally noncompliant with compulsory attendance requirements or the student is resisting parental efforts to comply with

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# Regulations

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~~compulsory attendance requirements, the school principal or principal's designee shall notify make a referral to the attendance officer or division superintendent of the student's seventh unexcused absence for the school year. The attendance officer shall schedule a conference with the student and the student's parent or parents within 10 days of receiving the referral. The division superintendent or designee attendance officer shall contact the Juvenile and Domestic Relations Court intake to may (i) file a complaint with the juvenile and domestic relations district court alleging the student is a child in need of supervision (CHINS<sup>Sup</sup>) as defined in § 16.1-228 of the Code of Virginia or to (ii) institute proceedings against the parent pursuant to § 18.2-371 or 22.1-262 of the Code of Virginia. In addition to written documentation of compliance the efforts to comply with the notice provisions of § 22.1-258 of the Code of Virginia, all records of intervention regarding the student's unexcused absences, such as copies of the conference meeting notes, attendance plan, and description of the supports offered or made available to the student shall be presented to the intake worker.~~

D. A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including via telephone or electronic devices), the location and date of the conference, a summary of what occurred, and follow-up steps.

## **8VAC20-730-30. Data collection and reporting.**

Data collection shall begin on the first day students attend for the school year. Each school division shall provide student level attendance data for each student that includes the number of unexcused absences in a manner prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative. Data shall be reported to the Virginia Department of Education pursuant to § 22.1-258 of the Code of Virginia and 8VAC20-730-20.

~~Excused and unexcused absences shall be counted for each individual student and shall be reported to the Virginia Department of Education as follows:~~

- ~~1. All excused and unexcused absences as defined in this chapter for each individual student shall be collected.~~
- ~~2. For each student with five unexcused absences, whether an attendance plan was developed, and if not, the reason.~~
- ~~3. For each student with six unexcused absences, whether an attendance conference was scheduled, and if not, the reason.~~
- ~~4. For each student with six unexcused absences, whether an attendance conference was actually held, and if not, the reason.~~

~~5. For each student with seven unexcused absences, whether a court referral was made or if proceedings against the parent or parents were initiated and, if not, the reason.~~

VA.R. Doc. No. R21-6016; Filed January 5, 2021, 4:04 p.m.

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## **TITLE 9. ENVIRONMENT**

### **STATE WATER CONTROL BOARD**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10, 9VAC25-110-15, 9VAC25-110-20, 9VAC25-110-60, 9VAC25-110-70, 9VAC25-110-80).**

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

**Effective Date:** August 2, 2021.

**Agency Contact:** Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email [peter.sherman@deq.virginia.gov](mailto:peter.sherman@deq.virginia.gov).

#### **Summary:**

*The amendments to the general permit include (i) clarifying the definition of "individual single family dwelling"; (ii) revising the term of the general permit to August 2, 2021, through July 31, 2026; (iii) requiring that the owner of an individual single family dwelling must submit a combined*



application; (iv) making certain language more generic so that dates do not have to be changed each reissuance; (v) adding language regarding continuation of permit coverage to address automatic renewal; (vi) adding latitude and longitude data requirement to the registration statement; (vii) adding State Corporation Commission entity identification data requirement to the registration statement for non-single-family homes (NSFHs); (viii) clarifying the Virginia Department of Health (VDH) notification and documentation necessary for the registration statement that an onsite system is not available; (ix) revising the discharge limits for *E. coli* and enterococci to reflect revised water quality standards that became effective October 21, 2019; (x) changing the operation and maintenance (O&M) requirements for NSFHs to be consistent with VDH requirements for single family homes to require NSFHs to engage a licensed operator, specify that persons who perform maintenance on discharging systems must hold a Class IV or higher wastewater work operator license or an alternative onsite sewage system operator license, require the licensed operator to visit the system two times per year, remove the requirement for NSFHs to have a maintenance contract, and remove the alternative for NSFHs to conduct O&M under an approved O&M plan; (xi) adding signature requirements for the combined application; (xii) adding conditional requirements for the electronic submission of registration statements; and (xiii) adding conditional requirements for the electronic submission of discharge monitoring reports. The general permit is being amended in order to reissue it.

Chapter 110

Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day

**9VAC25-110-10. Definitions.**

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 years.

"Board" or "State Water Control Board" means the Virginia State Water Control Board.

"Combined application" means the Virginia Department of Health Discharging System Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons per Day and State Water Control Board Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day. This application

combines the VDH Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) requirements with the board's registration statement requirements.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places.

"Individual single family dwelling" means a ~~residence housing one family or household~~ structure, including any accessory structure such as a garage or pool house, housing one family or household or one that is designed for one family only. When a treatment works serving an individual single family dwelling has additional unused connections, it remains a treatment works serving an individual single family dwelling until such time that an additional single family dwelling is connected to the treatment works.

"Receiving water" means a creek, stream, river, lake, estuary, groundwater formation, or other body of water into which treated waste or untreated waste is discharged.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"VDH" means the Virginia Department of Health.

**9VAC25-110-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2021.

**9VAC25-110-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general VPDES permit will become effective on August 2, ~~2016~~ 2021, and it expires on ~~August 1, 2021~~ July 31,

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2026. With respect to a particular dwelling, building, or site served, this general permit shall become effective upon the dwelling, building, or site served owner's compliance with the provisions of 9VAC25-110-60.

## 9VAC25-110-60. Authorization to discharge.

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement, if required to do so, in accordance with 9VAC25-110-70 and that registration statement is accepted by the board. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of a registration statement;
2. The owner complies with the effluent limitations and other requirements of 9VAC25-110-80; and
3. The board has not notified the owner, in accordance with subsection B of this section, that the discharge is not eligible for coverage under this permit.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

1. The owner is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to surface waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the board;
4. The owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit has applied to the Virginia Department of Health for an onsite sewage disposal system permit, and the Virginia Department of Health has determined that an onsite system is available to serve that parcel of land in accordance with the criteria in 12VAC5-640;
5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or
6. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b), and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit

Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for owners of sewage treatment works that serve buildings or dwellings other than individual single family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.19 of the Code of Virginia.

D. Continuation of permit coverage.

~~1. Any owner that was authorized to discharge under the domestic sewage discharges general permit issued in 2011 and who is required to and submits a complete registration statement, or for an individual single family dwelling a combined application, on or before August 1, 2016, is authorized to continue to discharge treated domestic sewage under the terms of the 2011 general permit. Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are continued if the owner has submitted a complete registration statement or, for an individual single family dwelling, a combined application, at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. Where the expiring permit coverage was originally based on automatic renewal as found in 9VAC25-110-70 A 2 b, such coverage is continued provided the owner continues to meet the automatic renewal criteria. The permittee is authorized to continue to discharge until such time as the board either:~~

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage ~~under the terms of the 2011 general permit~~ or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

#### **9VAC25-110-70. Registration statement.**

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit, and who is required to submit a registration statement, shall submit a complete VPDES general ~~VPDES~~ permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES General ~~VPDES~~ Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of the registration statement.

1. New treatment works. Any owner proposing a new discharge shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department at least 60 days prior to the date planned for commencing operation of the treatment works or a later submittal date established by the board.

2. Existing treatment works.

a. Any owner of an existing treatment works covered by an VPDES individual ~~VPDES~~ permit who is proposing to be covered by this general permit shall ~~notify the department and~~ submit a complete registration statement, or for an individual single family dwelling a combined application, at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal date established by the board.

b. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2014~~, and who intends to continue coverage under this general permit, is automatically covered by this general permit and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

(1) The ownership of the treatment works has not changed since the registration statement or combined application for coverage under the ~~2014~~ expiring general permit was submitted, or, if the ownership has changed (i) a new registration statement or combined application or (ii) VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

(2) There has been no change in the design or operation, or both, of the treatment works since the registration statement or combined application for coverage under the ~~2014~~ expiring general permit was submitted;

(3) For treatment works serving individual single family dwellings, VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If VDH objects to the

automatic renewal for this treatment works, the owner will be notified by the board in writing; and

(4) For treatment works serving buildings or dwellings other than individual single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing.

c. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2014~~ that does not qualify for automatic permit coverage renewal shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department ~~on or before June 2, 2016~~ at least 60 days prior to the expiration of the existing general permit or a later submittal date established by the board.

3. Late registration statements. Registration statements, or for individual single family dwellings combined applications, for existing treatment works [ not ] covered under subdivision 2 b of this subsection will be accepted after ~~August 1, 2016~~, but ~~authorization to discharge will not be retroactive.~~ Owners described in subdivision 2 b of this subsection that submit registration statements or combined applications after ~~June 2, 2016~~, are authorized to discharge ~~under the provisions of 9VAC25-110-60 D if a complete registration statement, or combined application, is submitted before August 2, 2016~~ the expiration [ date of this permit of the existing general permit but authorization to discharge will not be retroactive ].

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the building served by the treatment works is an individual single family dwelling. (If it is an individual single family dwelling, see the requirement to submit a combined application in 9VAC25-110-60 A 1.) If the building is not an individual single family dwelling, describe the use of the building or site served.

b. Name and street address of the building or site served by the treatment works.

2. a. Name, mailing address, email address (where available), and telephone number of the owner of the treatment works. Indicate if the owner is or will be the occupant of the dwelling or building served by the treatment works.

b. If the owner is not or will not be the occupant of the dwelling or building, provide an alternate contact name, mailing address, email address (where available), and telephone number of the dwelling or building, if available.

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3. Name of the water body receiving the discharge. Outfall latitude and longitude. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge from the treatment works, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day.

5. A description of any pollutants, other than domestic sewage, to be discharged.

6. For a proposed treatment works, indicate if there are central sewage facilities available to serve the building or site.

7. If the treatment works currently has a VPDES permit, provide the permit number. Indicate if the treatment works has been built and begun discharging.

8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit:

a. A 7.5 minute U.S. Geological Survey (USGS) topographic map or equivalent (e.g., a computer generated map) that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, other water bodies, and any residences within 1/2 mile downstream from the discharge point;

b. A site diagram of the existing or proposed treatment works; to include the property boundaries, the location of the dwelling, building, or site served, the individual sewage treatment units, the receiving water body, and the discharge line location; and

c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit ~~has been~~ was applied for and that the Virginia Department of Health has determined that ~~there is no an~~ onsite system ~~available~~ cannot be constructed to serve that parcel of land.

9. Operation and maintenance.

a. For the owner of a treatment works serving an individual single family dwelling, operation and maintenance requirements are specified in VDH regulations at ~~12VAC5-640-500~~ 12VAC5-640;

b. For the owner of a treatment works serving a building or dwelling other than an individual single family dwelling, ~~indicate if a valid maintenance contract has been obtained, or if an exception to the maintenance contract requirement has been requested and granted in accordance with subdivision 10 of this subsection. Provide the name of the individual or company contracted to perform the treatment works maintenance and the expiration date of the current contract, if applicable. If the treatment works has not been constructed yet, provide the name after the certificate to construct (CTC) is issued, and prior to requesting a certificate to operate (CTO) operation and maintenance must be consistent with Part I D 2 b, which requires that such owners engage a licensed operator.~~

~~10. The owner of a treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. If an operation and maintenance plan has been approved by the board previously and remains current and complete, then it does not need to be resubmitted. In such cases, the owner shall provide the date of approval of the operation and maintenance plan and identify any changes that have been made to the approved plan. State Corporation Commission entity identification number for dwellings other than individual single family dwellings if the facility is required to obtain an entity identification number by law.~~

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement or combined application shall be signed in accordance with 9VAC25-31-110 A of the VPDES Permit Regulation.

D. The registration statement ~~may be~~ or combined application shall be delivered to the ~~department~~ department's regional office serving the area where the treatment facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the treatment works is located.~~ Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements or combined applications), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

## **9VAC25-110-80. General permit.**

Any owner whose registration statement is accepted by the board, or whose permit coverage is automatically renewed,

shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG40

Effective Date: August 2, ~~2016~~ 2021

Expiration Date: ~~August 1 July 31, 2021~~ 2026

**GENERAL PERMIT FOR DOMESTIC SEWAGE  
DISCHARGES OF LESS THAN OR EQUAL TO 1,000  
GALLONS PER DAY**

**AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM AND THE VIRGINIA STATE WATER  
CONTROL LAW**

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State

Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement or combined application, this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(1)</sup>	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine <sup>(2)</sup>				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	0.016 mg/l <sup>(6)</sup>	1/year	Grab
E. coli <sup>(3)</sup>	NA	<del>235</del> <u>126</u> CFU/100 ml	1/year	Grab
enterococci <sup>(4)</sup>	NA	<del>404</del> <u>35</u> CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria <sup>(5)</sup>	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5.0 mg/l <sup>(6)</sup>	NA	1/year	Grab
NL = No Limitation, monitoring required NA = Not Applicable				
<sup>(1)</sup> The design flow of this treatment works is less than or equal to 1,000 gallons per day.				
<sup>(2)</sup> Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).				

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<sup>(3)</sup>Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(4)</sup>Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(5)</sup>Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

<sup>(6)</sup>Does not apply when the receiving stream is an ephemeral stream. "Ephemeral streams" are drainage ways, ditches, hollows, or swales that contain only (i) flowing water during or immediately following periods of rainfall or (ii) water supplied by the discharger. These waterways would normally have no active aquatic community.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b (4) (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

B. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified below in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(1)</sup>	NA	NL	1/year	Estimate
BOD <sub>5</sub>	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine <sup>(2)</sup>				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	2.0 mg/l	1/year	Grab
E. coli <sup>(3)</sup>	NA	<del>235</del> 126 CFU/100 ml	1/year	Grab
enterococci <sup>(4)</sup>	NA	<del>104</del> 35 CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria <sup>(5)</sup>	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
NL = No Limitation, monitoring required NA = Not Applicable				

- (1)The design flow of this treatment works is less than or equal to 1,000 gallons per day.
- (2)Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).
- (3)Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- (4)Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.
- (5)Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I B 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) ~~(e)~~ shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

C. Effluent limitations and monitoring requirements - discharges to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

~~The discharge~~ Discharges subject to the requirements in 9VAC25-415-40<sup>(1)</sup> shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) <sup>(4)</sup> <u>(2)</u>	NA	NL	1/3 months	Estimate
pH (standard units)	6.0	9.0	1/3 months	Grab
cBOD <sub>5</sub>	NA	5 mg/l	1/3 months	Grab
Total Suspended Solids	NA	6.0 mg/l	1/3 months	Grab
Ammonia as N (Apr 1 - Oct 31)	NA	1.0 mg/l	1/3 months	Grab
Ammonia as N (Nov 1 - Mar 31)	NA	3.1 mg/l	1/3 months	Grab
Dissolved Oxygen	6.0 mg/l	NA	1/3 months	Grab
E. coli <sup>(4)</sup> <u>(4)</u>	NA	<del>235</del> <u>126</u> CFU/100 ml	1/3 months	Grab
enterococci <sup>(4)</sup> <u>(5)</u>	NA	<del>404</del> <u>35</u> CFU/100 ml	1/3 months	Grab

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Total Phosphorus	NA	0.18 mg/l	1/3 months	Grab
Total Residual Chlorine <sup>(2)(3)</sup>				
After contact tank	1.0 mg/l	NA	1/3 months	Grab
Final effluent	NA	0.016 mg/l	1/3 months	Grab
NL = No Limitation, monitoring required NA = Not Applicable				
<sup>(1)</sup> Note conditional exemptions in 9VAC25-415-30.				
<sup>(2)</sup> The design flow of this treatment works is less than or equal to 1,000 gallons per day.				
<sup>(3)</sup> Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).				
<sup>(4)</sup> Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.				
<sup>(5)</sup> Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.				

2. All monitoring data required by Part I C 1 shall be maintained on site in accordance with Part II B. Monitoring results shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th day of the month following the monitoring period. The quarterly monitoring periods shall be January through March, April through June, July through September, and October through December. A copy of the maintenance log required by Part I D 2 b (4) (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings shall also be submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD<sub>5</sub> and total suspended solids shall not be less than 85%.

## D. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Operation and maintenance.

a. Treatment works serving individual single family dwellings. Operation and maintenance requirements for treatment works serving individual single family dwellings are specified in the Virginia Department of Health regulations at ~~12VAC5-640-500~~ 12VAC5-640.

b. Treatment works serving buildings or dwellings other than individual single family dwellings.

(1) ~~For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract~~

~~requirement has been requested and granted in accordance with Part I D 3. A copy of the maintenance contract, if applicable, shall be kept at the site of the treatment works and made available to DEQ for examination upon request. To ensure the treatment works is operated, maintained, monitored, and reported properly, the permittee shall engage a licensed operator as defined in subdivision D 3 of this section.~~

~~(2) For proposed treatment works, the permittee shall submit a certification that the permittee has a valid maintenance contract to DEQ prior to operation of the treatment works, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I D 3. A maintenance contract shall be kept in force during the permit term. A copy of the maintenance contract shall be kept at the site of the treatment works, and shall be made available to DEQ for examination upon request. The permittee shall:~~

~~(a) Have the system operated and maintained by a licensed operator, including the responsibilities specified in Part I D 2 b (3);~~

~~(b) Have a licensed operator visit the system at least semiannually;~~

~~(c) Have a licensed operator collect, analyze, and submit to the department any samples required under Part I A, Part I B, or Part I C, as appropriate, of this general permit;~~

~~(d) Provide prompt maintenance and repair of the treatment works once notified by the operator that repair or maintenance is necessary. The owner is responsible for all costs associated with the maintenance or repair.~~



Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;

(e) Maintain a copy of the log provided by the operator on the property where the system is located in electronic or hard copy form, make the log available to the department upon request, and make a reasonable effort to transfer the log to any future owner;

(f) Follow the treatment works operation and maintenance (O&M) manual (where available) and keep a copy of the O&M manual in electronic or hard copy form on the property where the system is located, make the O&M manual available to the department upon request, and make a reasonable effort to transfer the O&M manual to any future owner;

(3) At a minimum, the maintenance contract shall provide for the following The licensed operator has the following responsibilities:

(a) Performance of Perform all testing monitoring required in accordance with either Part I A, Part I B, or Part I C, as appropriate, and periodic (at least annual) semiannually) inspections of the treatment works. Note: Discharges from the treatment works should to the maximum extent feasible be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works). The owner or maintenance provider should not force a discharge in order to collect a sample;

(b) During visits required by this subsection, fulfill the operator responsibilities specified in this subsection through observing the system and through laboratory or field tests required by this permit or that the operator deems appropriate. In performing a required visit, the operator is responsible for the entire system and, where applicable, shall follow the O&M manual;

(b) A (c) Provide a written or electronic notification to the owner within 24 hours whenever the contract provider operator becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;

(c) A log of the following items shall be maintained at the treatment works by the contract provider: (d) Report monitoring results to DEQ as required in Part I A 2, Part I B 2, and Part I C 2, as applicable, as well as Part II C, and

maintain at the treatment works and provide to the permittee a log of the following items:

(i) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;

(ii) Alarm activation incidents, including the date and time of equipment failure and return to service;

(iii) Maintenance, corrective, including the date and amount of disinfection chemicals added to the chlorinator, the date and amount of dechlorination chemicals added if applicable, the date and approximate volume of sludge removed, and date receipts for chemicals and equipment purchased and maintenance performed;

(iv) Corrective or repair activities performed;

~~(iv)~~ (v) Recommended repair or replacement items; and

~~(v)~~ (vi) Copies of all reports prepared by the contract provider operator; and

~~(d) An~~ (vii) Sludge or solids removal; and

(e) Conduct an inspection shall be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring.

~~(4) The permittee shall keep a log of all maintenance performed on the treatment works including, but not limited to, the following:~~

~~(a) The date and amount of disinfection chemicals added to the chlorinator.~~

~~(b) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

~~(c) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(d) The date and approximate volume of sludge removed.~~

~~(e) Dated receipts for chemicals purchased, equipment purchased, and maintenance performed.~~

~~3. Operation and maintenance plan. The owner of any treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:~~

~~a. An up to date operation and maintenance manual for the treatment works;~~

~~b. A log of all maintenance performed on the treatment works including, but not limited to, the following:~~

~~(1) The date and amount of disinfection chemicals added to the chlorinator (if applicable).~~

~~(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

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~~(3) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(4) The date and approximate volume of sludge removed.~~

~~(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;~~

~~e. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and~~

~~d. An effluent monitoring plan to conform with the requirements of Part I A, Part I B, or Part I C, as appropriate, including all sample collection, preservation, and analysis procedures. Note: Discharges from the treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works). The owner or maintenance provider should not force a discharge in order to collect a sample.~~

~~Should the permittee fail to implement the approved operation and maintenance plan, or if there are violations of effluent limitations, the board reserves the right to require the permittee to obtain a maintenance contract.~~

3. All individuals who perform maintenance on discharging systems pursuant to this general permit are required to hold a valid Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. For purposes of this general permit, this requirement is satisfied where an individual is directly supervised by and under the direction of a licensed operator who remains responsible for such maintenance.

4. Compliance recordkeeping under Part I A, Part I B, and Part I C.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD <sub>5</sub>	2 mg/l
cBOD <sub>5</sub>	2 mg/l
Ammonia as N	0.20 mg/l
Total Phosphorus	0.10 mg/l
TSS	1.0 mg/l
Chlorine	0.10 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in subdivision 4 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards.

## Part II

### Conditions Applicable to All VPDES Permits

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

#### B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and

maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

~~C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department must be submitted consistent with the requirements in Part I A 2, Part I B 2, and Part I C 2, as applicable. However, should the board request that the permittee submit monitoring results, the following subsections would apply.~~

~~1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.~~

~~2. 1. Monitoring results submitted to the department shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.~~

~~3. 2. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.~~

~~4. 3. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.~~

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as

may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee ~~who~~ that discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or ~~who~~ that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

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H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include, ~~but are not limited to~~, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1. a.~~ An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this [ ~~paragraph~~ subdivision ]:

- ~~a.~~ (1) Any unanticipated bypass; and
  - ~~b.~~ (2) Any upset that causes a discharge to surface waters.
- ~~2. b.~~ A written report shall be submitted within five days and shall contain:
- ~~a.~~ (1) A description of the noncompliance and its cause;
  - ~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - ~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3. 2.~~ The permittee shall report all instances of noncompliance not reported under Part II I 1 [ ~~or 2~~ ], in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I [ 2 1 ].

3. [ The immediate (within 24 hours) reports required in Part II G, H, and I may be made to the department's regional

office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. ] Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

[ NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online [at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx](http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx). For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892. ]

J. Notice of planned changes

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the

permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;

- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized

representative may thus be either a named individual or any individual occupying a named position; and

- c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; or for permit coverage termination, ~~revocation and reissuance, or modification~~; or for denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement, or for an individual single family dwelling a combined application, at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant

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permission for registration statements or combined applications to be submitted later than the expiration date of the existing permit.

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, [ ~~2016~~ 2021, ] or, if the ownership has changed, (i) a new registration statement or for an individual single family dwelling a combined application or (ii) a VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, [ ~~2016~~ 2021 ];

c. For treatment works serving individual single family dwellings, the Virginia Department of Health does not object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing; and

d. For treatment works serving buildings or dwellings other than single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing.

3. Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement, or for an individual single family dwelling a combined application, in accordance with Part II M 1.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U) and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of ~~Parts~~ Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:  
(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the ~~cause(s)~~ cause of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part II I; and
- d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage. ~~Permits are~~ Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

- 1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;
- 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- 3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R19-5864; Filed January 12, 2021, 9:49 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to

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assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50).**

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

**Effective Date:** July 24, 2021.

**Agency Contact:** Eleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4178, or email [eleanor.daub@deq.virginia.gov](mailto:eleanor.daub@deq.virginia.gov).

**Summary:**

*The amendments (i) update the industrial stormwater requirements to be consistent with other industries subject to stormwater permitting and to be consistent with other VPDES general permits, including adding quarterly visual monitoring and annual inspections for nonstormwater discharges; (ii) exclude aquaculture from the requirements of the permit; and (iii) update definitions, including the definition of "seafood processing" to exclude shellfish aquaculture and to include NAICS (North American Industry Classification System) codes. The general permit is being amended in order to reissue it.*

Chapter 115

General Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities

**9VAC25-115-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the discharge of pollutants to surface waters.

"Control measure" means any best management practice or other method, including effluent limitations, used to prevent or reduce the discharge of pollutants to surface waters.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the facility; or (iii) return to compliance with permit requirements.

"Industrial activity" means the facilities classified under NAICS 311710 and SIC Code 2091 or 2092.

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"NAICS" means North American Industry Classification System from the U.S. Office of Management and Budget, 2017 edition.

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Seafood" includes crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs, and crayfish.

"Seafood processing facility" means any facility ~~classified under SIC Code 2091, 2092, 5142, or 5146, which that~~ processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility. ~~Seafood includes but is not limited to crabs, oysters, hand shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish,~~ where the primary purpose is classified under the following NAICS and SIC codes:

1. NAICS Code 311710 – Seafood Product Preparation and Packaging and SIC Code 2091 – Canned and Cured Fish and Seafoods, 2092 – Prepared Fresh or Frozen Fish and Seafoods;

2. NAICS Code 424420 – Packaged Frozen Food Merchant Wholesalers and SIC Code 5142 – Packaged Frozen Foods; and

3. NAICS Code 424460 – Fish and Seafood Merchant Wholesalers and SIC Code 5146 – Fish and Seafoods.

This definition does not include aquaculture facilities (including hatcheries) classified under SIC Code 0272 or 0921 and NAICS Code 112512.

"SIC" means the Standard Industrial Classification ~~Code or Industrial Grouping~~ from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes, ~~but is not limited to,~~ raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products;



raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, ~~but is not limited to,~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials and intermediate and ~~finished final~~ products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this ~~paragraph definition,~~ material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, ~~finished final~~ product, byproduct, or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities, including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition, include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit Regulation.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

**9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2020.

**9VAC25-115-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing facilities classified NAICS Code 311710 and as SIC Code Codes 2091 and 2092.

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, ~~2016~~ 2021, and will expire on ~~July 23, 2021~~ June 30, 2026. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30.

**9VAC25-115-30. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge process wastewater and stormwater as described in 9VAC25-115-20 A to surface waters of the Commonwealth of Virginia provided that:

1. The owner files a registration statement, in accordance with 9VAC25-115-40, and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-115-50; and
4. The owner has not been notified by the board that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

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1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year;
4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the ~~Virginia~~ Water Quality Standards; or
5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Conditional exclusion for no exposure to stormwater. Any owner covered by this permit that becomes eligible for a no exposure exclusion from stormwater permitting under 9VAC25-31-120 E may file a no exposure certification. Upon submission and acceptance by the board of a complete and accurate no exposure certification, the permit requirements for stormwater no longer apply. A no exposure certification must be submitted to the board once every five years.

D. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

~~D. E.~~ Continuation of permit coverage.

1. Any owner that was authorized to discharge under the seafood processing facilities general permit issued in 2011, and who submits a complete registration statement on or before July 23, 2016, is authorized to continue to discharge under the terms of the 2011 general permit. Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:
  - a. Issues coverage to the owner under this general permit; or
  - b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the ~~reissued~~ amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by ~~coverage under the 2011~~ the continued general permit coverage or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## **9VAC25-115-40. Registration statement.**

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete general VPDES permit registration statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the ~~general~~ VPDES general permit regulation for seafood processing facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the board at least ~~30~~ 60 days prior to the date planned for commencement of the discharge.

2. Existing facilities.

a. Any owner of an existing seafood processing facility covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal established by the board.

b. Any owner that was authorized to discharge under ~~the general~~ an expiring or expired VPDES general permit for seafood processing facilities ~~that became effective on July 24, 2011,~~ and that intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before June 24, 2016~~ at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board.

c. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained shall submit an amended registration statement to the board at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal established by the board.

3. Late registration statements. Registration statements for existing facilities covered under subdivision 2 b of this subsection will be accepted after ~~July 23, 2016~~ the expiration

~~date of the permit, but authorization to discharge will not be retroactive. Owners described in subdivision 2 b of this subsection that submit registration statements after June 24, 2016, are authorized to discharge under the provisions of 9VAC25-115-30 D if a complete registration statement is submitted before July 24, 2016.~~

B. The registration statement shall contain the following information:

1. Facility name, owner name, mailing address, email address (where available), and telephone number;
2. Facility street address (if different from mailing address);
3. Facility operator name, mailing address, email address, and telephone number if different than owner;
4. Does the facility discharge to surface waters? Name of receiving stream or streams if yes and, if no, describe the discharge or discharges;
5. Does the facility have a current VPDES Permit? Include the permit number if yes;
6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;
7. A U.S. Geological Survey (USGS) 7.5 minute topographic map or other equivalent computer generated map with sufficient resolution to clearly show the facility location, the discharge location or locations, and the receiving water body;
8. Facility SIC code or codes;
9. Nature of business at the facility;
10. Discharge outfall information including latitude and longitude, seafood process, receiving stream, discharge flow, and days per year of discharge for each outfall;
11. Facility maximum production information;
12. Facility line (water balance) drawing;
13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;
14. Treatment and solid waste disposal information;
15. Information on use of chemicals at the facility; ~~and~~
16. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and
17. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or

those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The registration statement shall be signed in accordance with 9VAC25-31-110 of the VPDES Permit Regulation.

C. The registration statement ~~may~~ shall be delivered to the ~~department~~ department's regional office where the seafood processing facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the seafood processing facility is located.~~ Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

**9VAC25-115-50. General permit.**

Any owner whose registration statement is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No.: VAG52

Effective Date: July 24, ~~2016~~ 2021

Expiration Date: ~~July 23, 2024~~ June 30, 2026

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations [ ~~and~~ ] Monitoring Requirements, [ ~~and~~ ] Special Conditions, [ ~~and~~ ] Part II-Stormwater Pollution Prevention Plans [ ~~;~~ ] and Part III-Conditions Applicable to All VPDES Permits, as set forth in this general permit.

# Regulations

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES**

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.15	0.30	NA	1/3 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES**

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) \_\_\_\_\_.

# Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	25	63	NA	1/3 Months	Composite

# Regulations

TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.



Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

10. TUNA PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

# Regulations

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 11. TUNA PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

**Part I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES**

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

# Regulations

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

# Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Raw material = The weight of oyster meat after shucking.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
	Flow (MGD)	NA	NL	NA	NA		
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite

# Regulations

Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 22. SCALLOP PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.



Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly	Daily	Monthly	Daily	Daily		
	Avg	Max	Avg	Max	Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

23. SCALLOP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly	Daily	Monthly	Daily	Daily		
	Avg	Max	Avg	Max	Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

# Regulations

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.3	4.6	NA	1/3 Months	Composite

TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

26. HERRING PROCESSING—ALL

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

27. HERRING PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

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Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			Sample Frequency	Sample Type
	kg/day		kg/kkg				
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.
2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.
3. Wastewater should be reused or recycled to the maximum extent practicable.
4. The permittee shall comply with the following solids management plan:
  - a. There shall be no discharge of floating solids or visible foam in other than trace amounts.
  - b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.
  - c. All settling basins shall be cleaned frequently in order to achieve effective settling.
  - d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.
  - e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle

and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in the discharge on a routine or frequent basis of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-

dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant that is not limited in the permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

7. Compliance reporting and recordkeeping under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal approved by the board.

10. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit or an alternative VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination

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does not release an owner from liability for any violations of this permit or the Clean Water Act."

☞ c. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

## Part II

### Stormwater Pollution Prevention Plans Stormwater Management

~~A stormwater pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit. The following stormwater management requirements apply only to seafood processors classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.~~

#### A. Monitoring and inspections.

1. Quarterly visual monitoring of stormwater quality. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in subdivision d of this subsection. The visual monitoring must be made during normal working hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

a. Samples will be in clean, colorless glass or plastic containers and examined in a well-lit area;

b. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the stormwater pollution prevention plan (SWPPP) why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

c. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.

d. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided this is documented in the SWPPP. Acceptable documentation

includes dates and times the outfalls were viewed or sampling was attempted, national Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

e. Representative outfalls – substantially identical stormwater discharges. If the facility has two or more outfalls that discharge substantially identical stormwater effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct quarterly visual monitoring on the stormwater discharges of just one representative outfall.

f. Visual monitoring reports shall be maintained on-site with the SWPPP. The report shall include:

(1) Outfall location;

(2) Monitoring date and time;

(3) Duration of storm event;

(4) Rainfall measurement or estimate (in inches) of the storm event that generated the discharge;

(5) Duration between the storm event sampled and the end of the previous measurable storm event;

(6) Monitoring personnel;

(7) Nature of the discharge (i.e., runoff or snow melt);

(8) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution;

(9) Probable sources of any observed stormwater contamination;

(10) Why it was not possible to take the sample within the first 30 minutes (if applicable); and

(11) Documentation to support substantially identical outfalls (if applicable) required by Part II A 1 e.

g. Corrective action. Whenever the visual monitoring shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

2. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater.

a. Inspections include loading and unloading areas, storage areas, including associated containment areas, waste management units, vents and stacks emanating from industrial activities, spoiled product and broken product container hold areas, animal holding pens, staging areas, air pollution control equipment, areas where spills or leaks

have occurred in the past three years, discharge points, and control measures.

b. At least one member of the pollution prevention team shall participate in the routine facility inspections.

c. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility but shall be at a minimum of once per calendar quarter unless written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

d. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

- (1) The inspection date;
- (2) The names of the inspectors;
- (3) Weather information and a description of any discharges occurring at the time of the inspection;
- (4) Any previously unidentified discharges of pollutants from the site;
- (5) Any control measures needing maintenance or repairs;
- (6) Any failed control measures that need replacement;
- (7) Any incidents of noncompliance observed; and
- (8) Any additional control measures needed to comply with the permit requirements.

e. Corrective action. Whenever the routine inspection shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

f. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

3. Nonstormwater discharges.

a. Allowable nonstormwater discharges. Discharges of certain sources of nonstormwater listed in Part II A 3 c are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated, covered under this permit, or covered under a separate VPDES permit.

b. Annual outfall inspection for unauthorized discharges. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

- (1) The date of the evaluation;
- (2) A description of the evaluation criteria used;
- (3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;
- (4) A description of the results of the evaluation for the presence of unauthorized discharges; and
- (5) The actions taken to eliminate unauthorized discharges if any were identified.

c. The following nonstormwater discharges are authorized by this permit:

- (1) Discharges from emergency firefighting activities;
- (2) Fire hydrant flushing, managed in a manner to avoid an instream impact;
- (3) Potable water, including water line flushing, managed in a manner to avoid an instream impact;
- (4) Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- (5) Irrigation drainage;
- (6) Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- (7) Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;
- (8) Routine external building washdown that does not use detergents or hazardous cleaning products;
- (9) Uncontaminated groundwater or spring water;
- (10) Foundation or footing drains where flows are not contaminated with process materials; and
- (11) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Corrective actions. The permittee shall take corrective action whenever:

1. Routine facility inspections, visual monitoring, inspections by local, state, or federal officials, or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;
2. The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.
3. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the

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SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added, implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

4. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part III K.

C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and implemented for the facility covered by this permit, which has stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

~~The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in stormwater discharges from the facility and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.~~

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of ~~this section~~. Part II C 2 (Contents of the SWPPP). If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 9VAC25-840. All plans incorporated by reference into the SWPPP become

enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

~~A. 1. Deadlines for plan SWPPP preparation and compliance.~~

~~1. Facilities that were covered under the 2011 Seafood Processing Facilities General Permit. a. Owners of facilities that were covered under the 2014 2016 Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP required by this part within 60 days of the board granting coverage under this permit.~~

~~2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit must shall prepare and implement the SWPPP within 60 days of the board granting coverage under this permit.~~

~~3. New owners of existing facilities. c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the transfer of title of the facility ownership change.~~

~~4. Extensions. d. Upon a showing of good cause, the director may establish a later date in writing for preparation of and compliance with the SWPPP.~~

~~B. 2. Contents of the SWPPP. The contents of the SWPPP shall include, at a minimum, the following items:~~

~~1. a. Pollution prevention team. The SWPPP shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and maintaining ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.~~

~~2. b. Site description. The SWPPP shall include the following:~~

~~a. Activities at the facility. (1) A description of the nature of the industrial activities at the facility.~~

~~b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.~~

~~e. (2) Site map. A site map identifying the following:~~



- (1) ~~The size of the property (in acres)~~ (a) The boundaries of the property and the size of the property in acres;
- (2) ~~(b) The location and extent of significant structures and impervious surfaces (roofs, paved areas, and any other impervious areas);~~
- (3) ~~(c) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow (e.g., use arrows to show which ways stormwater will flow), using arrows to indicate which direction stormwater will flow;~~
- (4) ~~(d) Locations of all existing structural and source control BMPs~~ stormwater control measures, including BMPs;
- (5) ~~(e) Locations of all surface water bodies receiving discharges from the site, including wetlands;~~
- (6) ~~(f) Locations of identified potential pollutant sources identified in Part II C 2 c;~~
- (7) ~~(g) Locations where significant spills or leaks identified under Part II C 2 c (3) have occurred;~~
- (8) ~~Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance or cleaning areas; loading or unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;~~ (9) (h) Locations of stormwater outfalls and monitoring locations, an approximate outline of the area draining to each outfall, and the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm sewer systems (MS4s), if the stormwater from the facility discharges to them; system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification codes. For example: Outfall Number 001, Outfall Number 002, etc.;
- (10) ~~(i) Location and description of all nonstormwater discharges;~~
- (11) ~~(j) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and;~~
- (12) ~~(k) Location and source of runoff suspected run-on to the site from an adjacent property, where the runoff contains property if the run-on is suspected of containing significant quantities of pollutants; and~~
- (l) Locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area if exposed to precipitation or runoff.
- d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams. A description of wetland sites that

~~may receive discharges from the facility shall also be provided. If the facility discharges through an MS4, the MS4 operator and the receiving water to which the MS4 discharges shall also be identified.~~

3. ~~c.~~ Summary of potential pollutant sources. The SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products, and application and storage of pest control chemicals used on facility grounds. Material handling activities include, but are not limited to, the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:

a. (1) Activities in area. A list of the industrial activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); exposed to stormwater;

b. (2) Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity pollutants, pollutant constituents, or industrial chemicals associated with each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to stormwater in the three years prior to the date the SWPPP was prepared or amended. The list shall include any hazardous substance substances or oil at the facility.

4. (3) Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities.

5. Stormwater controls:

a. ~~BMPs~~ d. Control measure considerations. Control measures shall be implemented for all the areas identified in Part II B-3 C 2 c (Summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the facility. If applicable, steps shall be taken to control or address the quality of discharges from the site that do not originate at the facility. regulated

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stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs control measures for each area where industrial materials or activities are exposed to stormwater. Selection of BMPs control measures shall take into consideration:

- (1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;
- (2) BMPs Control measures generally must be used in combination with each other for most effective water quality protection;
- (3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;
- (4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid groundwater contamination);
- (5) Flow attenuation by use of open vegetated swales and natural depressions can reduce ~~in-stream~~ instream impacts of erosive flows;
- (6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and
- (7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

~~b. e.~~ Control measures. The permittee shall implement the following types of BMPs control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (~~e.g., there are no storage piles containing salt~~).

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. ~~Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and of the conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized. The generation of dust, along with off site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized. The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:~~

(a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) Sweep or vacuum as feasible;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Implement BMPs to eliminate stormwater discharges of plastics.

(2) Eliminating and minimizing exposure. To the ~~maximum~~ extent practicable, ~~industrial materials and activities manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations,~~ shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:

(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;

(b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;

(c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants;

(d) Store leaking vehicles and equipment indoors, or if stored outdoors, use drip pans and adsorbents;

(e) Utilize appropriate spill or overflow protections equipment;

(f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and

(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(3) Preventive maintenance. ~~The permittee shall have a preventive maintenance program that includes regular inspection, testing, SWPPP shall include preventive maintenance that includes a description of procedures and a regular schedule for inspection of the following:~~

(a) All control measures that includes a description of the back-up practices that are in place should a runoff event occur while a control measure is off line; and

~~(b) Testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures situations that could result in leaks, spills, and other releases. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs) of the permit of pollutants in stormwater discharged from the facility.~~

(4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks-, including:

(a) Preventive measures ~~include, such as~~ barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling-;

(b) Response procedures ~~shall include (i), including~~ notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and ~~(ii) procedures for~~ stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable ~~RCRA~~ the Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. ~~One~~ If possible, one of these individuals shall be a member of the pollution prevention team-;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," and "fertilizers and pesticides") that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

~~(e)~~ (d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and maintained in other locations where it will be readily available.

~~(5) Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the SWPPP and be based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date~~

~~is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

~~(6)~~ (5) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all training and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors and maintenance personnel). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, ~~etc.~~ and pest control. The SWPPP shall include a summary of any training performed.

~~(7)~~ (6) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

~~(8)~~ (7) Management of runoff. The plan shall describe the stormwater runoff management practices (i.e., permanent structural BMPs control measures) for the facility. These types of BMPs are typically control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural BMPs control measures may require a separate permit under § 404 of the federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

~~C. Maintenance. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active operation (i.e., during a stormwater runoff event) to ensure that they are functioning correctly. The observations shall be documented in the SWPPP.~~

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained (e.g., spill response supplies available and personnel trained).

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If site inspections required by Part II B 5 b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

D. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.

1. Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater, as identified in Part II B 3. The personnel shall evaluate:

- a. Industrial materials, residue or trash that may have or could come into contact with stormwater;
- b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;
- c. Off site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;
- d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;
- e. Evidence of, or the potential for, pollutants entering the drainage system;
- f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;
- g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and
- h. Review of the results of both visual and any analytical monitoring done during the past year.

2. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part II B 2 c; revise the description of controls required by Part II B 5 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date

is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department.

3. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, the name or names of personnel making the evaluation, the date or dates of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part II D 1 (a) through (f) of this general permit. Observations shall include such things as: the location or locations of discharges of pollutants from the site; the location or locations of previously unidentified sources of pollutants; the location or locations of BMPs that need to be maintained or repaired; the location or locations of failed BMPs that need replacement; and location or locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP.

4. Where compliance evaluation schedules overlap with routine inspections required under Part II B 5 b (5), the annual compliance evaluation may be used as one of the routine inspections.

E. 3. Signature and plan SWPPP review.

1. Signature/location. a. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part II B, shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

2. b. Availability. The permittee shall make the SWPPP, annual site compliance evaluation report, and other information available to the department retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. c. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II B. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II B and shall be signed and dated in accordance with Part III K. The director may notify the permittee at any time that the SWPPP, BMPs control measures, or

other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

~~F.~~ 4. Maintaining an updated SWPPP. ~~4.~~ The permittee shall review and amend the SWPPP as appropriate whenever:

- a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility sufficient to impact water quality;
- b. Routine inspections or ~~compliance evaluations~~ visual monitoring determine that there are deficiencies in the control measures, including BMPs;
- c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;
- d. There is a significant spill, leak or other release at the facility; or
- e. There is an unauthorized discharge from the facility.

~~2.~~ f. SWPPP modifications shall be made within ~~30~~ 60 calendar days after the discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified ~~BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C)~~ control measures shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP control measure or implement additional ~~BMPs~~ control measures shall be documented in the SWPPP.

~~3.~~ g. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the ~~release incident~~, the circumstances leading to the ~~release incident~~, actions taken in response to the ~~release incident~~, and measures to prevent the recurrence of such releases. Unauthorized ~~releases and~~ discharges are subject to the reporting requirements of Part III G of this permit.

~~G.~~ Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:

- 1. Discharges from fire fighting activities;
- 2. Fire hydrant flushings;
- 3. Potable water including water line flushings;

~~4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~

~~5. Irrigation drainage;~~

~~6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;~~

~~7. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed;~~

~~8. Routine external building wash down that does not use detergents;~~

~~9. Uncontaminated groundwater or spring water;~~

~~10. Foundation or footing drains where flows are not contaminated with process materials; and~~

~~11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower, for example, "piped" cooling tower blowdown or drains.~~

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

- 1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
- 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
- 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
- 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

- 1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The ~~individual(s)~~ individuals who performed the sampling or measurements;
  - c. The ~~date(s) and time(s)~~ dates and times analyses were performed;
  - d. The ~~individual(s)~~ individuals who performed the analyses;

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- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

## C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such

other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see [ ~~NOTE in Part III F~~ Part III I 3) ] the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1. a.~~ An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- ~~a. (1)~~ Any unanticipated bypass; and
  - ~~b. (2)~~ Any upset that causes a discharge to surface waters.
- ~~2. b.~~ A written report shall be submitted within five days and shall contain:
- ~~a. (1)~~ A description of the noncompliance and its cause;
  - ~~b. (2)~~ The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - ~~c. (3)~~ Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3. 2.~~ The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

~~NOTE: 3.~~ The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's

regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>.

For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or
- (2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified ~~elsewhere in this permit;~~ under Part I B 6; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit ~~application~~ registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

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a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other ~~requested~~ information. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or

together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage termination, ~~revocation and reissuance, or modification~~; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~30~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state or local laws or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions in Part III U (Bypass) and Part III V (Upset) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.



P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U 3.

2. Notice.

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (Reports of noncompliance).

3. Prohibition of bypass.

- a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee that wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the ~~cause(s)~~ causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

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3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours ~~and~~ or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits. Permits are~~ permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

1. a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the board;

2. b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-115)

Standard Industrial Classification (SIC) ~~2091, 2092, 5142 or 5046 (Office of Management and Budget (OMB) SIC Manual, 1987); U.S. Office of Management and Budget (OMB) SIC Manual, 1987~~

[North American Industry Classification System \(NAICS\) U.S. Office of Management and Budget, 2017](#)

VA.R. Doc. No. R19-5819; Filed January 12, 2021, 9:58 a.m.

## Proposed Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with the second enactment of Chapter 1207 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide a public comment period of at least 60 days prior to adoption of final regulations.

**Title of Regulation:** **9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-130, 9VAC25-830-140).**

**Statutory Authority:** §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

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

**Public Comment Deadline:** May 3, 2021.

**Agency Contact:** Justin L. Williams, State Water Control Board, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185, FAX (804) 698-4178, or email [justin.williams@deq.virginia.gov](mailto:justin.williams@deq.virginia.gov).

### Summary:

*Pursuant to Chapter 1207 of the 2020 Acts of Assembly, which amended the Chesapeake Bay Preservation Act (§ 62.1-44.15:72 et seq. of the Code of Virginia) and added coastal resilience and adaptation to sea-level rise and climate change to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act, the proposed amendments provide performance criteria requirements related to trees, particularly mature trees, under the Chesapeake Bay Preservation Act program, including (i) requiring preservation and protection of mature trees, including in instances where existing vegetation is removed that includes trees and that trees are utilized in reestablishing vegetation to the maximum extent practicable; and (ii) providing that where vegetation or buffers must be established, the planting of trees should be utilized where practicable.*

### 9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations, and enforcement mechanisms, local governments shall require that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.
2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development

proposed. Mature trees shall only be removed where determined to be necessary to provide for the proposed use or development and protected during development to the maximum extent practicable.

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.

4. Land development shall minimize impervious cover consistent with the proposed use or development.

5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks, and drainfields, but otherwise as defined in § 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of onsite sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system that operates under a permit issued by the board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

(a) Sand mounds;

(b) Low-pressure distribution systems;

(c) Repair situations when installation of a valve is not feasible; and

(d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.

(4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).

(5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

(6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

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(7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.

(8) The local government shall require that the ~~owner(s)~~ owner alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.

(9) The local government shall ensure that the ~~owner(s)~~ owner are notified annually of the requirement to switch the valve to the opposite drainfield.

8. Land upon which agricultural activities are being conducted, including ~~but not limited to~~ crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent

with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other onsite activities to begin.

## **9VAC25-830-140. Development criteria for Resource Protection Areas.**

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

- (1) It does not conflict with the comprehensive plan;
- (2) It complies with the performance criteria set forth in 9VAC25-830-130;
- (3) Any nonwater-dependent component is located outside of Resource Protection Areas; and
- (4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

- (1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
- (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
- (3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and
- (4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the

optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

- a. Local governments shall establish administrative procedures to review such exemptions.
- b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees should be utilized to the maximum extent practicable and appropriate to site conditions.

- a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the

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buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Such measures should include to the maximum extent practicable and appropriate to site conditions the planting of trees in reestablishing the buffer.

#### 4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established should include the planting of trees to the maximum extent practicable.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

#### 5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where

removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees should be preserved and not removed to the maximum extent practicable under this provision. When trees are removed, the other vegetation to replace the trees should be trees as well to the maximum extent practicable.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees should be preserved to the maximum extent practicable consistent with the best available technical advice and permit conditions or requirements and trees should be utilized in the projects to the maximum extent practicable.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the ~~Virginia~~ Nutrient Management Training and Certification Regulations (4VAC5-15) (4VAC50-85) administered by the ~~Virginia Department of Soil and Water Conservation and Recreation Board.~~

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The

erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the ~~Virginia~~ Nutrient Management Training and Certification Regulations (4VAC5-15) (4VAC50-85) administered by the ~~Virginia Department of Soil and Water Conservation and Recreation Board~~ Department of Soil and Water Conservation and Recreation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or ~~his~~ the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay

Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, the local government should consider the planting of trees as a part of any such measures.

VA.R. Doc. No. R21-6648; Filed January 12, 2021, 5:39 p.m.

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with the second enactment of Chapter 1207 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide a public comment period of at least 60 days prior to adoption of final regulations.

**Title of Regulation:** **9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (adding 9VAC25-830-155).**

**Statutory Authority:** §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

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

**Public Comment Deadline:** May 3, 2021.

**Agency Contact:** Justin L. Williams, State Water Control Board, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185, FAX (804) 698-4178, or email [justin.williams@deq.virginia.gov](mailto:justin.williams@deq.virginia.gov).

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# Regulations

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## Summary:

*Pursuant to Chapter 1207 of the 2020 Acts of Assembly, which amended the Chesapeake Bay Preservation Act (§ 62.1-44.15:72 et seq. of the Code of Virginia) and added coastal resilience and adaptation to sea-level rise and climate change to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act, the proposed amendments define specific criteria related to coastal resilience for Tidewater Virginia localities to consider in land development activities.*

### **9VAC25-830-155. Climate change resilience and adaptation criteria.**

A. This section applies in addition to 9VAC25-830-130 and 9VAC25-830-140. Local governments shall incorporate these provisions into all relevant ordinances and ensure their enforcement through implementation of appropriate processes and documentation for oversight and enforcement. Localities shall update and amend their ordinances to adopt and incorporate these performance criteria by (insert date three years after effective date of this amendment).

B. Land development and adaption measures or activities, including buffer modifications or encroachments necessary to install adaptation measures, mitigation measures, or other actions necessary to address the impacts of climate change, including sea-level rise, recurrent flooding, and storm surge, may be allowed in a Chesapeake Bay Preservation area provided the activity complies with all other applicable provisions of this chapter. Nothing in these provisions shall preclude a locality from adopting requirements or criteria in addition to the requirements of these provisions to address the impacts of climate change and sea-level rise in Chesapeake Bay Preservation areas in the locality, including extension of the Resource Protection Areas, further restrictions on development, or further preservation of existing vegetation.

C. Local governments shall consider the impacts of climate change or sea-level rise on any proposed land development in the Resource Protection Area. Based upon this consideration, local governments may require the installation of additional measures or design features as part of the proposed land development consistent with the requirements of the Act and this chapter. In considering the future impact, local governments shall:

1. Consider a potential impact range of no less than 30 years;
2. Utilize an appropriate model or forecast to aid in the consideration of impacts through use of:
  - a. The most updated 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve;
  - b. A model or forecast that incorporates or utilizes the 2017 National Oceanographic and Atmospheric

Administration (NOAA) Intermediate-High scenario projection curve; or

c. A peer-reviewed model or forecast that includes NOAA 2017 projections, including the Intermediate-High scenario projection curve and has been developed, utilized, or recognized by a state or federal agency and is not based solely upon extrapolation of historical data;

3. Include the consideration of future floodplain, water level, storm surge, or other impacts in altering the Resource Protection Area or diminishing the protection of water quality due to the proposed development from these impacts; and

4. Identify measures, conditions, or alterations to the proposed land development to address these impacts as necessary and appropriate based upon site conditions, type of proposed land development, and projected potential impacts. This includes measures such as state or federally recognized or approved best management practices appropriate for the site conditions and land development to address such impacts.

D. Local governments shall not grant exceptions to the requirements of 9VAC25-830-130, 9VAC250-830-140, or 9VAC20-830-155 where:

1. The impact of climate change, including sea-level rise on the land development is not considered as outlined in subsection C or this section for exceptions in the Resource Protection Area;

2. The exception consists of approval solely for the use of fill or other material to the Resource Protection Area or within 100 feet of the Resource Protection Area; or

3. The exception permits encroachment into seaward 50 feet of the buffer area of the Resource Protection Area notwithstanding permitted modifications and adaptive measures.

E. Local governments may allow adaption measures or activities within the Resource Protection Area to address climate change, including sea-level rise subject to the following criteria. These criteria and requirements shall apply to such adaptation measure or activity in lieu of the criteria in 9VAC25-830-130 and 9VAC25-830-140:

1. Where the adaptation measure or activity is within a Resource Protection Area that has been previously developed, including Intensely Developed Areas, and is not naturally vegetated, the adaptation measure or activity shall:

a. Be designed, implemented, and maintained in accordance with best management practices applicable to the adaptation measure or activity as recognized or approved by a state or federal agency;

b. Not consist solely of the use of fill or other materials to raise the elevation of a Resource Protection Area;



**TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

**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:** 10VAC5-210. Motor Vehicle Title Lending (amending 10VAC5-210-10 through 10VAC5-210-95).

**Statutory Authority:** §§ 12.1-13 and 6.2-2214 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comment Deadline:** February 12, 2021.

**Agency Contact:** Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email [dustin.physioc@scc.virginia.gov](mailto:dustin.physioc@scc.virginia.gov).

**Summary:**

*The proposed amendments conform the regulation to Chapters 1215 and 1258 of the 2020 Acts of Assembly and make technical changes to the regulation. Specifically, proposed amendments (i) modify the definitions; (ii) reorganize and update the motor vehicle title lending pamphlet; (iii) require an applicant's surety bond be retained in the event that a person's application for a license is withdrawn or denied; (iv) clarify that licensees need to continuously maintain the requirements and standards for licensure prescribed in § 6.2-2206 of the Code of Virginia; (v) remove the requirement that a licensee provide each prospective borrower with a separate printed notice before the licensee furnishes the borrower with a loan application or receives information relating to loan qualification; (vi) require a licensee to post the schedule of finance charges and notice prescribed by subdivision 15 of § 6.2-2215 of the Code of Virginia on its website as well as in each licensed location; (vii) update the required contents of the annual report that licensees are required to furnish to the Commissioner of Financial Institutions; (viii) establish that if a licensee performs certain loan functions on or through its website or mobile application and any other products or services are offered or sold to Virginia residents using such website or mobile application, then the offer or sale of such other products or services constitutes other business; (ix) impose specific conditions on the conduct of a check cashing*

c. Incorporate natural features or measures such as the planting of vegetation or trees, maximize preservation of existing natural vegetation and trees particularly mature trees, and minimize land disturbance and impervious cover to the maximum extent practicable consistent with the applicable best management practices; and

d. Where applicable, obtain any applicable federal, state, and local permits and comply with any applicable federal, state, and local requirements.

2. Where the adaptation measure or activity is within a Resource Protection Area that is naturally vegetated or has not been previously developed, the measure or activity shall:

a. Be designed and implemented in accordance with best management practices applicable to the adaptation measure or activity as recognized or approved by state or federal agencies;

b. Preserve to the maximum extent practicable any existing vegetation in the additional 50 feet landward from the Resource Protection Area;

c. Not consist solely of the use of fill or other materials to raise the elevation of a Resource Protection Area;

d. Maximize the preservation of existing vegetation and trees, particularly mature trees, incorporate the planting and establishment of vegetation, particularly trees, and minimize land disturbance and impervious cover to the maximum extent practicable consistent with the applicable best management practices; and

e. Where applicable, obtain any applicable federal, state, and local permits and comply with any applicable federal, state, and local requirements.

3. Where the adaptation measure or activity is a best management practice recognized or approved by a state or federal agency to reduce runoff, prevent erosion, and filter nonpoint source pollution, a Water Quality Impact Assessment in accordance with subdivision 6 of 9VAC25-830-140 shall not be required. All other measures or activities shall require a Water Quality Impact Assessment in accordance with subdivision 6 of 9VAC25-830-140.

4. Where the proposed adaptation measure is a living shoreline project or related activity, the locality otherwise approves of the project, the projects maintains or establishes a vegetative buffer inland of the living shoreline to the maximum extent practicable, minimizes land disturbance to the maximum extent practicable, and the project receives approval from the Virginia Marine Resources Commission, including a permit as applicable, and any other necessary permits or approvals, the adaptation measure shall be exempt from additional requirements or criteria, including a Water Quality Impact Assessment.

VA.R. Doc. No. R21-6647; Filed January 12, 2021, 5:34 p.m.



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# Regulations

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*business from a licensee's motor vehicle title lending offices; (x) revise the condition that specifically pertains to the operation of an automated teller machine from a licensee's motor vehicle title lending offices; (xi) prohibit a licensee from providing a consumer with an envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity; (xii) establish that a licensee's advertisements need to comply with the disclosure requirements for advertisements that are contained in Regulation Z (12 CFR Part 1026); (xiii) require a licensee to maintain copies of any notices or disclosures that the licensee furnishes to a borrower; and (xiv) eliminate the annual fee that is currently imposed on companies that are granted a license between January 1 and September 15 of the year of the assessment.*

AT RICHMOND, JANUARY 11, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00001

Ex Parte: In the matter of Adopting  
Revisions to the Regulations Governing  
Motor Vehicle Title Lending

## ORDER TO TAKE NOTICE

Section 6.2-2214 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code ("Chapter 22"). The Commission's regulations governing motor vehicle title lending are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code ("Chapter 210").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 210. The proposed amendments are prompted by Chapters 1215 and 1258 of the 2020 Virginia Acts of Assembly ("Chapters 1215 and 1258"), which made extensive changes to Chapter 22 that became effective on January 1, 2021. In particular, Chapters 1215 and 1258 altered many of the requirements, prohibitions, and limitations that govern motor vehicle title loans made by licensees under Chapter 22. Accordingly, the Bureau has proposed substantial revisions to Chapter 210, which are needed in order to conform the regulations to Chapters 1215 and 1258.

The vast majority of the Bureau's proposal aligns Chapter 210 with Chapters 1215 and 1258, as well as clarifies certain issues that stem from the legislation. However, the Bureau is also proposing various technical changes as well as an assortment of revisions that are not prompted by the legislation. These revisions include the following:

### Definitions.

The proposed amendments to section 10 VAC 5-210-10 modify the definitions of "business day," "good funds instrument," and "liquid assets," and remove several terms that are now defined in § 6.2-100 of the Code or that do not appear in Chapter 210 as proposed.

Requirements for licensees; reporting requirements; acquisitions.

In section 10 VAC 5-210-20, the Bureau proposes to retain an applicant's surety bond in the event that a person's application for a license is withdrawn or denied. The proposal also modifies the requirement for reporting certain contact and loan record location information to the Bureau, and clarifies that licensees need to continuously maintain the requirements and standards for licensure prescribed in § 6.2-2206 of the Code.

Motor vehicle title lending pamphlet.

The proposed revisions to section 10 VAC 5-210-30 remove the requirement that a licensee provide each prospective borrower with a separate printed notice before the licensee furnishes the borrower with a loan application or receives information relating to loan qualification. Additionally, the proposal relocates the acknowledgment for the borrower rights and responsibilities pamphlet to the end of the licensee's application form. Section 10 VAC 5-210-30 also contains amendments that update the prescribed text of the pamphlet to reflect changes that are being proposed elsewhere in Chapter 210.

Posting of charges and contact information for complaints.

The proposed amendments to section 10 VAC 5-210-40 require a licensee to post the schedule of finance charges and notice prescribed by subdivision 15 of § 6.2-2215 of the Code on its website as well as in each licensed location. In addition, the Bureau is proposing to modify the contents of the notice as well as remove the minimum type sizes that are specified for the notice and schedule of finance charges.

Annual reporting requirements.

The modifications that are proposed in section 10 VAC 5-210-60 update the required contents of the annual report that licensees are required to furnish to the Commissioner of Financial Institutions.

Conducting other business.

In section 10 VAC 5-210-70, the proposal establishes that if a licensee performs certain loan functions on or through its website or mobile application and any other products or services are offered or sold to Virginia residents using such website or mobile application, then the offer or sale of such other products or services constitutes other business for purposes of this section.

Additionally, the proposed revisions clarify that although Commission approval is not required for either a registered check cashing business or a licensed short-term lending business to be conducted from a licensee's motor vehicle title lending offices, the conduct of these businesses from such offices is otherwise governed by section 10 VAC 5-210-70. In this regard, the proposal imposes specific conditions on the conduct of a check cashing business from a licensee's motor vehicle title lending offices. Furthermore, subsection E of this section currently attaches specific conditions to the conduct of a payday lending business from a licensee's motor vehicle title lending offices, so the Bureau has proposed that the references therein to payday lending and payday loans be changed to short-term lending and short-term loans in order to reflect the new purview of Chapter 18 of Title 6.2 (§ 6.2-1800 *et seq.*) of the Code.<sup>1</sup>

Lastly, the proposal revises the condition that specifically pertains to the operation of an automated teller machine from a licensee's motor vehicle title lending offices, and clarifies that the conditions prescribed in section 10 VAC 5-210-70 generally supersede the conditions that were set forth in the other business approval orders previously entered by the Commission.

Advertising.

The modifications proposed by the Bureau in section 10 VAC 5-210-80 prohibit a licensee from providing a consumer with an envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity. The proposal also establishes that a licensee's advertisements need to comply with the disclosure requirements for advertisements that are contained in Regulation Z (12 C.F.R. Part 1026).

Books, accounts, and records; responding to requests from the Bureau.

The proposed revisions to section 10 VAC 5-210-90 require a licensee to maintain copies of any notices or disclosures that the licensee furnishes to a borrower pursuant to Chapter 22 or Chapter 210. In addition, the Bureau is proposing to extend the provisions concerning the disposal of records containing a consumer's personal financial information to former licensees.

Schedule of annual fees for the examination, supervision, and regulation of motor vehicle title lenders.

The amendments proposed by the Bureau in section 10 VAC 5-210-95 eliminate the annual fee that is currently imposed on companies that are granted a license under Chapter 22 between January 1 and September 15 of the year of the assessment.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before February 12, 2021. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2021-00001. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments).

(3) This Order and the attached proposed regulations shall be made available on the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(4) The Commission's Division of Information Resources shall provide a copy of this Order and the proposed regulations to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

A COPY of this Order and the attached proposed regulations shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order and the attached proposed regulations to all licensed motor vehicle title lenders and such other interested persons as he may designate.

<sup>1</sup>Chapters 1215 and 1258 removed all existing references to payday loans from Chapter 18 and instead authorized companies licensed under Chapter 18 to make short-term loans.

**10VAC5-210-10. Definitions.**

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

"Act" means Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, and calendars, ~~etc.~~

~~"Bureau" means the Bureau of Financial Institutions.~~

"Business day" for purposes of the Act and this chapter means a day on which the ~~licensee's office~~ licensee is ~~open for business as posted as required by subsection B of 10VAC5-210-50~~ able to make loans pursuant to the Act.

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~~"Commission" means the State Corporation Commission.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

~~"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.~~

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle and willing to accept such payments, payment effected by use of a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system.

"Liquid assets" for purposes of the Act and this chapter means cash funds held in a checking account or savings account at a depository institution, money market funds, commercial paper, and treasury bills.

"Prepaid card" means a card with a network logo (e.g., Visa, MasterCard, American Express, or Discover) that is used by a cardholder to access money that has been loaded onto the card in advance.

B. Other terms used in this chapter shall have the meanings set forth in § ~~6.2-100~~ 6.2-2200 of the ~~Act~~ Code of Virginia.

## **10VAC5-210-20. Requirements for licensees; reporting requirements; acquisitions.**

A. A licensee shall maintain in its own name unencumbered liquid assets per approved place of business ~~in Virginia~~ of at least \$75,000 at all times.

1. The minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

2. A licensee shall upon request by the bureau submit proof that it is complying with the provisions of this subsection.

B. After receiving its license from the commission, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

C. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact, if any, on the activities of the licensee ~~in Virginia~~:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. The Attorney General or any other Virginia governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

3. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

4. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's motor vehicle title lender license, title pawn license, or similar license; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its motor vehicle title lending, title pawn, or similar business; or (iii) takes any other action against the licensee relating to its motor vehicle title lending, title pawn, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

5. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed motor vehicle title lending, title pawn, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in motor vehicle title lending, title pawn, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in motor vehicle title lending, title pawn, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

D. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

E. If a person has filed a bond with the bureau, as required by § 6.2-2204 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; ~~or~~

2. The person ceases making motor vehicle title loans; or

3. The person's application for a license is withdrawn or denied.

F. ~~Within 30~~ A licensee or former licensee shall provide the following information to the bureau within 10 days after a such

person's license is surrendered or revoked, ~~the former licensee shall provide the bureau with~~ or the licensed business is otherwise closed: (i) the name names, address addresses, email addresses, and telephone number numbers of a designated contact person and the person who consumers may contact to make payment arrangements for outstanding motor vehicle title loans; (ii) the location of the licensee's or former licensee's motor vehicle title loan records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding motor vehicle title loans.

G. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all motor vehicle title loans that the person made while licensed as a motor vehicle title lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases making motor vehicle title loans.

H. Loans made pursuant to the Act prior to January 1, 2021, that remain outstanding on or after January 1, 2021, may be collected in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made.

I. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2206 of the Code of Virginia.

**10VAC5-210-30. Notice and Motor vehicle title lending pamphlet.**

~~A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a~~ A licensee shall provide the prospective borrower each applicant for a motor vehicle title loan with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

~~B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice. 2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by~~

~~the licensee. The notice shall be printed in at least 24 point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The end of each application form shall contain a separate acknowledgment shall state stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities." 3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia. The acknowledgment shall be initialed and dated by each applicant for a motor vehicle title loan.~~

C. The ~~borrower rights and responsibilities~~ pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," Notice Information from Lender, etc.) shall be ~~printed~~ in bold type.

D. The required text of the ~~borrower rights and responsibilities~~ pamphlet shall be as follows:

MOTOR VEHICLE TITLE LENDING IN THE  
COMMONWEALTH OF VIRGINIA  
BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or ~~on the Internet at~~ <http://www.sec.virginia.gov/bfi> [scc.virginia.gov](http://www.scc.virginia.gov).

**In General:** You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection.

**Notice from Lender:** A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

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**Information from Lender:** Virginia law prohibits a motor vehicle title lender from providing you with any false, misleading, or deceptive information.

**Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time:** Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; ~~or~~ (ii) you currently have another motor vehicle title loan from ~~either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia;~~ or (iii) you currently have a short-term loan from any lender that is licensed to make this type of loan under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

~~**Prohibition on Obtaining Loan on Same Day Another Loan was Repaid:** Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.~~

**Verification of Income:** Before making a motor vehicle title loan to you, a lender must make a reasonable attempt to verify and document your income.

**Prohibition on Loans to Covered Members of the Armed Forces and their Dependents:** Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

**Certificate of Title / Other Security Interests:** Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the motor vehicle department in the state where your motor vehicle is registered and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

**Maximum Loan Amount:** A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide \$2,500.

**Minimum and Maximum Loan Term / Monthly Payments:** Under Virginia law, your loan term cannot be ~~either less than 120 days or more than 42~~ 24 months. Your loan term also cannot be less than six months unless your total monthly payment will not exceed the greater of (i) 5.0% of your verified gross monthly income or (ii) 6.0% of your verified net monthly income. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal, fees, and interest combined. ~~However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.~~

~~**Interest, Fees, and Other Loan Costs Charges:** The following are the maximum interest rates that a Δ motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including \$700 interest at a simple annual rate not to exceed 36%; and (ii) 18% per month on the portion of the outstanding balance between \$700.01 and \$1,400; and (iii) 15% per month on the portion of the outstanding balance of \$1,400.01 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the initial principal is higher than \$700 a monthly maintenance fee that does not exceed the lesser of \$15 or 8.0% of your originally contracted loan amount, provided that the maintenance fee is not added to your loan balance on which interest is charged. In addition to interest and the monthly maintenance fee, a motor vehicle title lender may charge you for the actual cost of recording its lien with the motor vehicle department in the state where your motor vehicle is registered a deposit item return fee for the actual amount incurred by the motor vehicle title lender, not to exceed \$25, if your check or electronic payment is returned unpaid because the account on which it was drawn was closed by you or contained insufficient funds, or you stopped payment on the check or electronic payment.~~

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to ~~five percent~~ 5.0% of the amount of the payment, but not to exceed \$20.

Note that if your originally contracted loan amount is \$1,500 or less, a motor vehicle title lender cannot charge or receive from you a total amount of fees and charges greater than 50% of your loan amount. If your loan amount is more than \$1,500, the total amount of fees and charges cannot exceed 60% of your loan amount.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle

title lender or a person acting on behalf of the lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be ~~directly or indirectly charged, contracted for, collected, or received, or recovered~~ by a motor vehicle title lender.

The interest, fees, and charges mentioned in this section may not be charged, collected, or received unless they are included in your written loan agreement.

**Costs of Repossession and Sale:** A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, ~~preparing for sale,~~ and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. However, the total amount charged to you for the repossession and sale of your motor vehicle cannot exceed 5.0% of your originally contracted loan amount. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

**Written Loan Agreement:** A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original copy of your signed loan agreement ~~at the time you sign it.~~ If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

**Property Insurance:** A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

~~**Prohibition on Obtaining Funds Electronically / Authority to Prepare Checks / Electronic Payments / Obtaining PINs:**~~ A motor vehicle title lender is prohibited from ~~electronically debiting your deposit account or obtaining any of your funds by electronic means. The lender also cannot obtain~~ obtaining any agreement from you that gives the lender or a third party the authority to prepare a check that is drawn upon your deposit account. If the motor vehicle title lender is

equipped to handle and willing to accept such payments, you may make a payment on your loan by using a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system. However, the lender is prohibited from obtaining or receiving a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with your loan. If you have authorized electronic payments for your loan, you have the right to remove your authorization at any time.

**Loan Proceeds:** You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender or an affiliate of the lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office as the motor vehicle title lender is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

~~**Other Businesses:** A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.~~

**Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans:** ~~A motor vehicle title lender is~~ You are prohibited from ~~making you a~~ using any of the money from your motor vehicle title loan ~~so that you can to~~ purchase another product or service sold (i) at the motor vehicle title lender's business location, or (ii) on or through the motor vehicle title lender's website or mobile application. ~~A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.~~

**Right to Cancel or Rescind:** You have the right to cancel or rescind your motor vehicle title loan at any time prior to ~~the~~ close 5 p.m. of the third business on the next day the motor vehicle title lender is open immediately following the date your day you entered into the loan is made agreement by either returning the ~~original~~ loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system. If you timely cancel or rescind your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

~~**Cash Payments / Partial Payments / Prepayments / Refinancing:**~~ You are permitted to make payments on your motor vehicle title loan by cash, certified check, cashier's

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check, money order, or if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, debit card, or the Automated Clearing House system. You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the amount along with a statement of the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to ~~its specified due~~ the maturity date of the loan without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance ~~as well as the total amount of interest that you will be required to pay.~~

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any ~~accrued and unpaid interest and other charges~~ fees that you may owe on your motor vehicle title loan. If you prepay your loan in full or your loan is refinanced with another motor vehicle title loan, the motor vehicle title lender must refund to you a prorated portion of loan charges, except for any deposit item return fees and late charges, based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted. The lender must provide you with the refund in the form of cash or a check no later than two business days after you prepay your loan in full or your loan is refinanced. Your loan may be refinanced with another motor vehicle title loan only if the new loan is made by the same motor vehicle title lender (i.e., the lender who made the loan that you are currently obligated to repay).

**Lender to Return Original Loan Agreement and Certificate of Title:** Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take any action necessary to ~~reflect the termination of~~ terminate its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the motor vehicle department in the state where your motor vehicle is registered.

**No Rollovers, Extensions, Etc.:** ~~A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.~~

**Failure to Repay:** Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. **IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS**

**AND SELL YOUR MOTOR VEHICLE** (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

**Repossession and Sale of your Motor Vehicle:** If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must (i) allow you to recover any personal items from your motor vehicle promptly and at no cost, and (ii) send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the redemption amount, which is the sum of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, ~~preparing for sale,~~ and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card, prepaid card, ~~or~~ debit card, or the Automated Clearing House system.

Within ~~30~~ 10 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive ~~any surplus~~ all proceeds from the sale in excess of the



~~sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on redemption amount specified in the notice that the motor vehicle title lender sent you prior to selling your motor vehicle title loan through the date. However, the motor vehicle title lender repossessed your motor vehicle; and (iii) may reduce the amount that you receive by any additional reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle that were not included in the redemption amount.~~

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

**Violation of the Virginia Consumer Protection Act Legal Action Against Lender:** You have the right to bring a civil action against a motor vehicle lender if you suffer a loss as a result of the motor vehicle title lender violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. If you are successful in your civil action, you have the right to be reimbursed for reasonable attorney fees, expert witness fees, and court costs you have incurred in connection with your civil action. Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (~~§ 6.2-2200 et seq.~~) of Title 6.2 of the Code of Virginia may also be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

**Complaints and Contacting the Bureau of Financial Institutions:** For assistance with any complaints you may have against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or ~~on the Internet at <http://www.scc.virginia.gov/bfi>~~ [scc.virginia.gov](http://www.scc.virginia.gov). Complaints must be filed in writing with the Bureau of Financial Institutions. ~~Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416 and include copies of supporting documentation.~~

**10VAC5-210-40. Posting of charges and contact information for complaints.**

Licensees shall conspicuously post in each licensed location and on their websites the schedule of finance charges and notice required by subdivision ~~44~~ 15 of § 6.2-2215 of the Code of Virginia in accordance with the provisions of this section.

A. The minimum size for the poster in licensed locations shall be 24 inches by 18 inches.

B. The title for the schedule of finance charges, which shall be printed or displayed in ~~at least 48 point~~ bold type, shall be "SCHEDULE OF FINANCE CHARGES FOR MOTOR VEHICLE TITLE LOANS." The title for the notice, which

shall also be printed or displayed in ~~at least 48 point~~ bold type, shall be "HOW TO FILE A COMPLAINT AGAINST US."

C. The schedule of finance charges and notice shall be printed or displayed in ~~at least 24 point~~ bold type.

D. The notice shall contain the following statement: "Should you wish to file a complaint against us, you may contact the Virginia Bureau of Financial Institutions at (800) 552-7945 or ~~on the Internet at <http://www.scc.virginia.gov/bfi>~~. ~~Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416 [scc.virginia.gov](http://www.scc.virginia.gov).~~"

**10VAC5-210-50. Additional business requirements and restrictions.**

~~A. Each original license shall be prominently posted in each place of business of the licensee.~~

~~B.~~ A licensee shall post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

~~C.~~ B. A licensee shall endeavor to provide the loan documents, ~~printed notice,~~ and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

~~D.~~ C. A licensee shall not knowingly make a motor vehicle title loan to ~~(i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces.~~ To enable a licensee to make ~~these determinations and the this~~ determination ~~in subsection F of this section,~~ a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

- ~~1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?~~
- ~~2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?~~
- ~~3.~~ Are you (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?
- ~~4.~~ 2. Are you married to an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

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~~5. 3.~~ Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

~~6. 4.~~ Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

~~E. D.~~ A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

~~F.~~ A licensee shall not knowingly make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

~~G.~~ The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

~~H. E.~~ A licensee shall not (i) electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries; or (ii) obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution. This subsection shall not be construed to prohibit a licensee from accepting a payment made by good funds instrument.

~~I. F.~~ If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office as the licensee or any affiliated check casher to charge the borrower a fee for cashing the check.

~~J. G.~~ A borrower shall have the right to cancel or rescind a motor vehicle title loan agreement at any time on or before 5 p.m. of the close of third business on the next business day immediately following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels or rescinds a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word

"canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, ~~contract for~~, collect, receive, recover, or require a borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

~~K. H.~~ A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the updated balance due on the loan.

~~L.~~ A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

~~M. I.~~ A licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

~~N. J.~~ When sending the written notices and accounting specified by subsection 19 of § 6.2-2215 and § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

~~O. K.~~ A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed the lesser of \$20 or 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

~~P. L.~~ Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, ~~contract for~~, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

~~Q. M.~~ Pursuant to subdivision 2 of § 6.2-2201 of the Code of Virginia and subdivision 17 of § 6.2-2215 of the Code of Virginia, a licensee shall not make a motor vehicle title loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from

originating motor vehicle title loans through its own employees.

~~R. N.~~ A licensee shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a motor vehicle title loan transaction.

~~S. O.~~ A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including the Truth in Lending Act (15 USC § 1601 et seq.), Regulation Z (12 CFR Part 1026), the Equal Credit Opportunity Act (15 USC § 1691 et seq.), Regulation B (12 CFR Part 1002), and the Standards for Safeguarding Customer Information (16 CFR Part 314).

~~T. P.~~ A licensee shall not provide any information to a borrower or prospective borrower that is false, misleading, or deceptive.

~~U. Q.~~ A licensee shall not engage in any business or activity that directly or indirectly results in an evasion of the provisions of this chapter.

**10VAC5-210-60. Annual reporting requirements.**

When making the annual report required by § 6.2-2210 of the Code of Virginia, in addition to other information required by the commissioner, a licensee shall provide the following data regarding motor vehicle title loans made under the Act:

1. The total number and dollar amount of ~~motor vehicle title loans made by the licensee.~~
2. The total number of individual borrowers to whom ~~motor vehicle title loans were made by the licensee.~~
3. The minimum, ~~and maximum, and average loan amount of motor vehicle title loans made by the licensee amounts.~~
4. The minimum, maximum, and average contracted Annual Percentage ~~Rate of motor vehicle title loans made by the licensee Rates.~~
5. The minimum, maximum, and average ~~term loan terms (in days) of motor vehicle title loans made by the licensee.~~
6. The total contracted loan charges.
7. The total loan charges paid by borrowers.
8. The total number and dollar amount of deposit item return fees paid by borrowers.
9. The total number of loans that went into default.
10. The total number of individual borrowers that failed to make a monthly payment on a ~~motor vehicle title~~ loan for at least 60 days.
- 7- ~~11.~~ The total number of motor vehicles that were repossessed by or on behalf of the licensee.

12. The total number of motor vehicles that were surrendered to the licensee.

13. The total number of motor vehicles that were redeemed by borrowers after being repossessed or surrendered.

~~8- 14.~~ The total number of repossessed ~~or surrendered~~ motor vehicles that were sold by or on behalf of the licensee.

15. The total fair market value, as stated in the loan agreements, of repossessed or surrendered motor vehicles that were sold by or on behalf of the licensee.

16. The total amount of proceeds the licensee received from the sale of repossessed or surrendered motor vehicles.

17. The total amount of sale proceeds paid to borrowers pursuant to subsection C of § 6.2-2217 of the Code of Virginia.

18. The total amount of charges paid by borrowers for the repossession and sale of motor vehicles, including charges the licensee collected or recovered through the proceeds it received from the sale of repossessed or surrendered motor vehicles.

19. The total number of charged-off loans and the total dollar amount charged off.

~~9- 20.~~ The total number ~~and dollar amount~~ of personal money judgments against borrowers that were obtained by or on behalf of the licensee along with a breakdown of ~~this total~~ these totals that identifies the number ~~and dollar amount~~ of judgments the licensee pursued based on each of the following borrower actions: (i) intentionally damaging or destroying a motor vehicle that secures a title loan; (ii) intentionally concealing a motor vehicle that secures a title loan; (iii) giving the licensee a lien on a motor vehicle that is already encumbered by an undisclosed prior lien; and (iv) subsequently giving a security interest in, or selling, a motor vehicle that secures a title loan to a third party, without the licensee's written consent.

**10VAC5-210-70. ~~Other~~ Conducting other business in motor vehicle title lending offices.**

A. This section governs the conduct of any business other than motor vehicle title lending where a licensed motor vehicle title lending business is conducted. As used in this section, the term "other business operator" refers to a ~~licensed motor vehicle title lender licensee~~ or third party, including an affiliate ~~or subsidiary~~ of the ~~licensed motor vehicle title lender licensee~~, who conducts or wants to conduct other business from one or more motor vehicle title lending offices.

1. Pursuant to ~~subdivision 18 of § 6.2-2215~~ 6.2-2218.1 of the Code of Virginia, a licensee shall not conduct the business of making motor vehicle title loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a ~~registered~~ check cashing business registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2

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of the Code of Virginia, a short-term lending business licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. No person shall engage in the business of selling insurance or enrolling borrowers under group insurance policies from any office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted.

3. Pursuant to § 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check-casher under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted, unless the person is licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia and the loans are made in accordance with Chapter 18 of Title 6.2 of the Code of Virginia. Accordingly, a person registered or required to be registered as a check-casher shall not make motor vehicle title loans. This section shall not apply to any other business that is transacted solely with persons residing outside of Virginia.

4. Notwithstanding any provision of this section or order entered by the commission prior to January 1, 2021, the business of making loans under an open-end credit plan as described in § 6.2-312 of the Code of Virginia shall not be conducted from any office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted. However, if prior to January 1, 2021, a licensee received commission authority for an other business operator to conduct open-end credit business from the licensee's motor vehicle title lending offices, the other business operator may continue collecting payments on any outstanding open-end loans (i) in accordance with the preexisting terms of the open-end credit agreements provided that such terms were permitted by law when the agreements were made, and (ii) subject to the conditions that were imposed by the commission in its approval order.

5. Notwithstanding any provision of this section or order entered by the commission prior to January 1, 2021, a licensee shall not make motor vehicle title loans at the same location at which the licensee, or any affiliate or owner of the licensee, conducts business under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia. However, if prior to January 1, 2021, a licensee received commission authority for the licensee or its affiliate or owner to make consumer finance loans from the licensee's motor vehicle title lending offices, then the licensee or its affiliate or owner may continue collecting payments on any outstanding consumer finance loans (i) in accordance with the preexisting terms of the loan contracts provided that such

terms were permitted by law when the loans were made, and (ii) subject to the general conditions set forth in subsection D of this section.

6. If a licensee accepts loan applications, sends or receives loan-related information or documents, disburses loan funds, or accepts loan payments on or through the licensee's website or mobile application, and any other products or services are or will be offered or sold to Virginia residents on or through such website or mobile application, then the offer or sale of such other products or services shall constitute the conduct of other business and shall be subject to all of the provisions of this section to the same extent as if such other business was conducted by an other business operator from the licensee's motor vehicle title lending offices.

B. No other business shall be conducted in a location where a licensee conducts a motor vehicle title lending business unless the proposed other business is financial in nature and the licensee obtains prior approval from the commission. Applications for approval shall be made in writing on a form provided by the commissioner, and shall be accompanied by payment of the a \$300 fee required by law and any information relating to the application that the commissioner may require. In acting upon an application, the commission shall consider (i) whether the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; (ii) whether the applicant has been operating its motor vehicle title lending business in accordance with the Act and this chapter; and (iii) any other factors that the commission deems relevant.

1. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

2. Prior approval from the commission shall not be required for a licensee to conduct a motor vehicle title lending business from one or more locations where an other business operator will conduct (i) a registered check cashing business under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, or (ii) a licensed short-term lending business under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. However, the conduct of these other businesses from a licensee's motor vehicle title lending offices shall otherwise be governed by this section, including the conditions prescribed in subsections D, E, and K of this section.

C. ~~Written~~ Except as provided in subdivision B 2 of this section, ~~written~~ evidence of commission approval of each other business conducted by an other business operator should be maintained at each approved location where such other business is conducted.

D. All ~~approved~~ other businesses in motor vehicle title lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing or registration requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.
4. The licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's motor vehicle title lending business and in a different location within the licensee's motor vehicle title lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

E. If a licensee ~~receives commission authority for~~ an other business operator ~~to conduct~~ conducts a payday short-term lending business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday short-term loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday short-term loan from the other business operator.
2. The other business operator shall not make a payday short-term loan to a person if (i) the person has an outstanding

motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

3. The other business operator and the licensee shall not make a payday short-term loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday short-term loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

5. The other business operator shall be licensed or exempt from licensing under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.

F. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's motor vehicle title lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

G. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation ~~and or~~ or electronic tax filing services, or (ii) facilitating third party tax preparation ~~and or~~ or electronic tax filing services, from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, ~~arrange, or broker~~ a motor vehicle title loan that is secured by ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~
2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

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H. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a motor vehicle title loan transaction.
2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
3. The licensee shall not make, ~~arrange, or broker~~ a motor vehicle title loan that is secured by ~~(i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.~~
4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.
5. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

I. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be licensed or exempt from licensing under Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia.
2. Pursuant to subdivision A 5 of this section, the other business shall be conducted by a person other than the licensee or an affiliate or owner of the licensee.
3. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

~~2.~~ 4. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

~~3.~~ 5. The licensee and other business operator shall not make a motor vehicle title loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. 6. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

J. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's motor vehicle title lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a ~~motor vehicle title loan from that was made by the licensee or~~ any other lender conducting business from the licensee's motor vehicle title lending offices.

K. If an other business operator conducts a check cashing business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be registered or exempt from registration under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia.
2. If the other business operator is registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia, then the other business operator shall not make any loans unless the other business operator is licensed under, and the loans are made in accordance with, Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.
3. The other business operator shall not charge a fee to cash a check issued by the licensee or any other person operating in the licensee's motor vehicle title lending offices.

L. The commission may impose any additional conditions upon the conduct of other business in motor vehicle title lending offices that it deems necessary and in the public interest.

M. Except as otherwise provided in subdivision A 4 of this section, the conditions set forth or referred to in subsections D through L of this section shall supersede the conditions set

forth in the commission's approval orders entered prior to January 1, 2021.

~~L.~~ N. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-210-100.

#### **10VAC5-210-80. Advertising.**

A. A licensee shall disclose the following information in its advertisements:

1. The name of the motor vehicle title lender as set forth in the license issued by the commission.
2. A statement that the motor vehicle title lender is "licensed by the Virginia State Corporation Commission."
3. The license number assigned by the commission to the motor vehicle title lender (i.e., VTL-XXX).

B. The information required by subsection A of this section shall be disclosed in accordance with the disclosure standards prescribed in § 6.2-2218 B of the Code of Virginia.

C. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

D. Every advertisement used by, or published on behalf of, a licensee shall comply with the disclosure requirements for advertisements contained in Regulation Z (12 CFR Part 1026).

#### **10VAC5-210-90. Books, accounts, and records; responding to requests from the bureau.**

A. A licensee shall maintain in its licensed offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved.

B. In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after final payment is made on any motor vehicle title loan:

1. The signed and dated loan application.
2. The motor vehicle title loan agreement. If a loan has been repaid or satisfied in full, a licensee shall maintain a copy of the motor vehicle title loan agreement with the word "paid" or "canceled" along with documentation showing that the licensee released its security interest in the borrower's motor vehicle.

3. A record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Supporting documentation shall include any factors used to determine the value of the motor vehicle, including the motor vehicle's condition, features, mileage, as well as the name of the pricing guide that the licensee relied upon in making the loan.

4. Any disclosures that were given to a borrower pursuant to the Truth in Lending Act (15 USC § 1601 et seq.) or any other federal or state laws.

5. The certificate of title for the motor vehicle, which shall reflect the licensee's security interest unless the borrower canceled, rescinded, or fully satisfied the motor vehicle title loan prior to the licensee recording its security interest with the motor vehicle department in the state where the motor vehicle is registered.

6. Any notices or disclosures that a licensee is required to furnish to a borrower pursuant to the Act or this chapter.

C. A licensee shall maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee, including motor vehicles that are voluntarily surrendered by borrowers. The log or record shall include the following information: (i) the borrower's first and last name; (ii) the make, model, year, and vehicle identification number of the motor vehicle; (iii) the date the motor vehicle was repossessed; (iv) the date the motor vehicle was sold; (v) the name of the purchaser; and (vi) the sale price of the motor vehicle. Furthermore, in addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee:

1. The written notices and accounting sent by the licensee to a borrower pursuant to § 6.2-2217 of the Code of Virginia along with the proof of mailing from the United States Postal Service or other common carrier.
2. Supporting documentation of the sale of the motor vehicle and the proceeds derived from the sale.
3. The check or other method of payment used to deliver any excess proceeds from the sale of the motor vehicle to a borrower.

D. A motor vehicle title lender shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including ~~but not limited to~~ solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

E. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee

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shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-2212 of the Code of Virginia.

F. If a licensee or former licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. ~~Licensees~~ A licensee or former licensee may arrange for service from a business record destruction vendor.

## **10VAC5-210-95. Schedule of annual fees for the examination, supervision, and regulation of motor vehicle title lenders.**

Pursuant to § 6.2-2213 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by ~~persons licensed~~ licensees under the Act. The assessment defrays the costs of the examination, supervision, and regulation of licensees by the bureau.

The annual fee shall be \$500 per office plus \$2.85 per motor vehicle title loan made by each licensee. The annual fee shall be computed on the basis of (i) the number of offices, authorized and opened, as of December 31 of the year preceding the year of the assessment, and (ii) the number of motor vehicle title loans made under the Act during the calendar year preceding the year of the assessment.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before September 15 for the current calendar year. The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment (~~i.e., the number of offices and motor vehicle title loans made~~). ~~In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened, as of September 15 of that year.~~

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the reimbursement for expenses

authorized by subsection B of § 6.2-2213 of the Code of Virginia.

VA.R. Doc. No. R21-6616; Filed January 12, 2021, 12:20 p.m.



## **TITLE 12. HEALTH**

### **STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES**

#### **Emergency Regulation**

Title of Regulation: **12VAC35-46. Regulations for Children's Residential Facilities (amending 12VAC35-46-10; adding 12VAC35-46-1150 through 12VAC35-46-1250).**

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Effective Dates: February 20, 2021, through August 19, 2022.

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, TDD (804) 371-8977, or email [john.cimino@bhds.virginia.gov](mailto:john.cimino@bhds.virginia.gov).

#### Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the amendments align Virginia children's residential facilities licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment.*

#### **12VAC35-46-10. Definitions.**

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Allied health professionals" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of



diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

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

"Applicable state regulation" means any regulation that the department determines applies to the facility. The term includes, but is not necessarily limited to, regulations promulgated by the Departments of Education, Health, Housing and Community Development, or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license.

"ASAM" means the American Society of Addiction Medicine.

"Aversive stimuli" means the physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper sauce or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the resident but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's individualized service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, or social functioning.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming into contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and that receives public funds; and
2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Behavioral Health and Developmental Services under the Rules and Regulations for ~~the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury~~ by the Department of Behavioral Health and Developmental Services, 12VAC35-105.

"Clinically managed, low-intensity residential care" means providing an ongoing therapeutic environment for children requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the child into work, education, and family environments; and strengthening adaptive skills that may not have been achieved or have been diminished during the child's active addiction. A clinically managed, low-intensity residential care is also designed for the child suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed, medium-intensity residential care" means a substance use treatment program that offers 24-hour supportive treatment of children with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. The children served by clinically managed, medium-intensity

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residential care are children who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services or his authorized agent.

"Complaint" means an accusation against a licensed facility regarding an alleged violation of regulations or law.

"Contraband" means any item prohibited by law or by the rules and regulations of the department, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain and 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; or (ii) any similar action that normally inflicts pain or discomfort.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, that provide for support and problem solving. Such interventions take place between provider staff and resident families or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the department. A corrective action plan must be completed within a specified time.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Day" means calendar day unless the context clearly indicates otherwise.

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

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized

supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"DOE" means the Department of Education.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

"Health record" means the file maintained by the provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed and modified at intervals to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies, and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intellectual disability" means ~~mental retardation~~ a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

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

"Mechanical restraint" means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications; or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration-approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to the resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to the resident. A medication error does not include a resident's refusal of offered medication.

~~"Mental retardation" ("intellectual disability") means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed as conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia). According to the American Association of Intellectual Disabilities (AAID) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor and behavioral factors. Within an individual limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations the term "intellectual disability" is used instead of "mental retardation."~~

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, that affect an individual's ability to function successfully in the community.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On-duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

~~"On-site"~~ "On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Parent" means a natural or adoptive parent or surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities."  
"Parent" means either parent unless the facility has been

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provided documentation that there is a legally binding instrument, a state law, or court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

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

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) residential services to children with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse; or (ii) residential services for persons with brain injury.

"Record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to the care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including, but not limited to, personal care, habilitation, or academic educational needs of the resident.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents

or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Serious incident" means:

1. Any accident or injury requiring medical attention by a physician;
2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, the health, safety or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" ~~or "services"~~ means planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse. Services include residential services, including those for persons with brain injury.

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Social skills training" means activities aimed at developing and maintaining interpersonal skills.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more regulations that represents minimal risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Systemic deficiency" means violations documented by the department that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive, and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a regulation or portion of a regulation, or permission to meet the intent of the regulation by a method other than that specified in the regulation, when the department, in its sole discretion, determines (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

**12VAC35-46-1150. (Reserved).**

**12VAC35-46-1160. Clinically managed, medium-intensity residential services staff criteria.**

A clinically managed, medium-intensity residential care program shall meet the following staff requirements. The program shall:

1. Ensure the availability of emergency consultation with a licensed physician by telephone or in person in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide staff 24 hours a day;

2. Provide licensed clinicians who are able to obtain and interpret information regarding the signs and symptoms of intoxication and withdrawal, as well as the appropriate monitoring and treatment of those conditions and how to facilitate entry into ongoing care;

3. Provide appropriately trained staff who are competent to implement physician-approved protocols for the child's or adolescent's observation, supervision, and treatment, including over the counter medications for symptomatic relief, determination for the appropriate level of care, and

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facilitation of the child's or adolescent's transition to continuing care;

4. Provide staff training that shall include at a minimum the requirements within 12VAC35-46-310, and all staff administering over the counter medications shall complete the training program approved by the Board of Nursing and required by subsection L of § 54.1-3408 of the Code of Virginia;

5. Provide access, as needed, to medical evaluation and consultation, which shall be available 24 hours a day to monitor the safety and outcome of withdrawal management in this setting, in accordance with the provider's written criteria for admission and discharge as required by 12VAC35-46-640 and 12VAC35-46-765; and

6. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

## **12VAC35-46-1170. Clinically managed, medium-intensity residential services program criteria.**

A clinically managed, medium-intensity residential care program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or group therapy, programming, and psychoeducation as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach a child or adolescent the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of stay is determined by the child's or adolescent's condition and functioning;

9. Make medication assisted treatment (MAT) available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources;

10. Provide educational services in accordance with state law to maintain the educational and intellectual development of the child or adolescent while they are admitted to the service. When indicated, additional educational opportunities shall be provided to remedy deficits in the educational level of children or adolescents who have fallen behind because of their involvement with alcohol and other drugs;

11. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

12. Provide daily clinical services to assess and address the child's or adolescent's withdrawal status and service needs. This may include nursing or medical monitoring, use of medications to alleviate symptoms, or individual or group therapy or programming specific to withdrawal and withdrawal support.

## **12VAC35-46-1180. Clinically managed, medium-intensity residential services admission criteria.**

A. A clinically managed, medium-intensity residential care program provides treatment for children who have impaired functioning across a broad range of psychosocial domains, including disruptive behaviors, delinquency and juvenile justice involvement, educational difficulties, family conflicts and chaotic home situations, developmental immaturity and psychological problems.

B. Before a clinically managed, medium-intensity residential service program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

2. Meet the admission criteria of Level 3.5 of ASAM, including the specific criteria for adolescent populations.

## **12VAC35-46-1190. Clinically managed, medium-intensity residential services discharge criteria.**

Before a clinically managed, medium-intensity residential service program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;

2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or

3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

**12VAC35-46-1200. Clinically managed, medium-intensity residential services co-occurring enhanced programs.**

A. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

**12VAC35-46-1210. Clinically managed, low-intensity residential services staff criteria.**

A clinically managed, low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician and emergency services, available 24 hours a day, seven days a week by the clinically managed, low-intensity residential services provider. The program shall also provide allied health professional staff present onsite 24 hours a day;

2. Have clinical staff, with the credentials described in subdivision 3 of this section, who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;

3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; and

4. Have staff that shall be knowledgeable about child or adolescent development and experienced in engaging and working with children or adolescents.

5. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

**12VAC35-46-1220. Clinically managed, low-intensity residential services program criteria.**

A clinically managed, low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to children or adolescents, such as partial hospitalization or intensive outpatient treatment. Services shall be designed to stabilize the child's or adolescent's substance use disorder, improve the child's or adolescent's ability to structure and organize the tasks of daily living and recovery;

2. Collaborate with care providers to develop an individual treatment plan for each child or adolescent with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

6. Maintain direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the child's or adolescent's condition;

7. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

8. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

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11. Make MAT available for all children. MAT may be provided by facility staff or coordinated through alternative resources.

## **12VAC35-46-1230. Clinically managed, low-intensity residential services admission criteria.**

Before a clinically managed, low-intensity residential service program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and
2. Meet the admission criteria of Level 3.1 of ASAM, including the specific criteria of adolescent populations.

## **12VAC35-46-1240. Clinically managed, low-intensity residential services discharge criteria.**

Before a clinically managed, low-intensity residential service program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;
2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or
3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

## **12VAC35-46-1250. Clinically managed, low-intensity residential services co-occurring enhanced programs.**

A. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer appropriate psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the child's or adolescent's mental condition.

B. Clinically managed, low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists.

C. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms

and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-46)

Report of Tuberculosis Screening, Virginia Department of Health,  
<http://www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Forms/documents/Form2.pdf>.

U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 6th Edition, January 2005, U.S. Government Printing Office, Washington, D.C.

The ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition, American Society of Addiction Medicine, 11400 Rockville Pike, Suite 200, Rockville, MD 20852, [asam.org](http://asam.org)

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, SW, Suite 900 Washington, DC 20024, [psychiatry.org](http://psychiatry.org)

VA.R. Doc. No. R21-6440; Filed January 8, 2021, 1:32 p.m.

## **Emergency Regulation**

**Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-1360 through 12VAC35-105-1390, 12VAC35-105-1410).**

**Statutory Authority:** § 37.2-203 of the Code of Virginia.

**Effective Dates:** February 20, 2021, through August 19, 2022.

**Agency Contact:** Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

### **Preamble:**

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (2020 Appropriation Act) and to align the department's licensing regulations with anticipated changes to Medicaid behavioral health regulations in Item 313 of Chapter 1289, the amendments remove provisions that would conflict with newly funded behavioral health services*



*and establish new licensed services for those newly funded behavioral health services that cannot be nested under an existing department license, including substantive changes to the existing license requirements for Program for Assertive Community Treatment (PACT) services, which are inconsistent with the Assertive Community Treatment (ACT) services that will be funded as part of Behavioral Health Enhancement.*

**12VAC35-105-20. Definitions and units of measurement.**

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or
7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping him achieve his personal goals;
2. Serve as the primary provider of all the services that an individual receiving ACT services needs;
3. Maintain a high frequency and intensity of community-based contacts;
4. Maintain a very low individual-to-staff ratio;
5. Offer varying levels of care for all individuals receiving ACT services, and appropriately adjust service levels according to each individual's needs over time;
6. Assist individuals in advancing toward personal goals with a focus on enhancing community integration and regaining valued roles, such as worker, family member, resident, spouse, tenant, or friend;
7. Carry out planned assertive engagement techniques, including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;
8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;
9. Deliver all services according to a recovery-based philosophy of care; and
10. Promote self-determination, respect for the individual receiving ACT as an individual in such individual's own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

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"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

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

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental

illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

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

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive

language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

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"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include

physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

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

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the

following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service " or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MCHSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MCHSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach. This service is provided weekly over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or
3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

~~"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:~~

- ~~1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;~~
- ~~2. Minimally refers individuals to outside service providers;~~
- ~~3. Provides services on a long-term care basis with continuity of caregivers over time;~~
- ~~4. Delivers 75% or more of the services outside program offices; and~~

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~~5. Emphasizes outreach, relationship building, and individualization of services.~~

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 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 the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is

professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse

(substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the

individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut

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by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;
2. An individual who is or was missing;
3. An emergency room visit;
4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;
5. Choking incidents that require direct physical intervention by another person;
6. Ingestion of any hazardous material; or
7. A diagnosis of:
  - a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;
  - b. A bowel obstruction; or
  - c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;
2. A sexual assault of an individual; or
3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a

licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-



3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means structured treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring to individuals who require more intensive services than is normally provided in an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management. but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care, an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of

the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

**12VAC35-105-30. Licenses.**

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Assertive community treatment (ACT);
2. Case management;
3. 3. ICF/IID;
4. 4. Community intermediate care facility-MR;
5. 5. Residential crisis stabilization;
6. 6. Nonresidential crisis stabilization;
7. 7. Day support;
8. 8. Day treatment, includes therapeutic day treatment for children and adolescents;
9. 9. Group home and community residential;
10. 10. Inpatient psychiatric;

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- ~~10.~~ 11. Intensive community treatment (ICT);
- ~~11.~~ 12. Intensive in-home;
- ~~12.~~ 13. Managed withdrawal, including medical detoxification and social detoxification;
- ~~13.~~ 14. Mental health community support;
- 15. Mental health intensive outpatient;
- ~~14.~~ 16. Opioid treatment/medication assisted treatment;
- ~~15.~~ 17. Emergency;
- ~~16.~~ 18. Outpatient;
- ~~17.~~ 19. Partial hospitalization;
- ~~18.~~ Program of assertive community treatment (PACT);
- ~~19.~~ 20. Psychosocial rehabilitation;
- ~~20.~~ 21. Residential treatment;
- ~~21.~~ 22. Respite care;
- ~~22.~~ 23. Sponsored residential home;
- ~~23.~~ 24. Substance abuse residential treatment for women with children;
- ~~24.~~ 25. Substance abuse intensive outpatient;
- ~~25.~~ 26. Supervised living residential; and
- ~~26.~~ 27. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

## Article 7

### Intensive Community Treatment and ~~Program of~~ Assertive Community Treatment Services

#### 12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of substance ~~addiction or abuse~~ use disorder or developmental disability, personality disorder, or brain injury, are not eligible for services.
2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:
  - a. Performing practical daily living tasks;

- b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or
- c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following:

- a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;
- b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;
- c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);
- d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);
- e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);
- f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or
- g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving ~~PACT~~ ACT or ICT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. Change in the individual's residence to a location out of the service area;
2. Death of the individual;
3. Incarceration of the individual for a period to exceed a year or long-term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for ~~PACT~~ ACT or ICT services upon the individual's anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;
4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge; or
5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or ~~PACT~~ ACT team.

**12VAC35-105-1370. Treatment team and staffing plan.**

## A. Services are delivered by interdisciplinary teams.

1. ~~PACT and~~ ICT teams shall include the following positions:

a. Team ~~Leader~~ leader - one full-time QMHP-A with at least three years of experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.

b. Nurses - ~~PACT and~~ ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (~~RN~~) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (~~LPN~~) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ~~ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.~~

c. One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self-identified employment or substance abuse recovery goals.

d. ~~Peer~~ ICT peer specialists - one or more full-time equivalent QPPMH or QMHP-A who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.

e. Program assistant - one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.

f. Psychiatrist - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. QMHP-A and mental health professional standards for ICT teams:

a. At least 80% of the clinical employees or contractors on an ICT team, not including the program assistant or

psychiatrist, shall be QMHP-As qualified to provide the services described in 12VAC35-105-1410.

b. Mental health professionals - At least half of the clinical employees or contractors on an ICT team, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity for ICT teams:

a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. ~~A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.~~

b. ~~ICT and PACT~~ teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.

c. ~~ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.~~

d. ~~A transition plan shall be required of PACT teams that will allow for "start-up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.~~

4. ACT teams shall have sufficient staffing composition to meet the varying needs of individuals served by the team as required by this section. Each ACT team shall meet the following minimum position and staffing requirements:

a. Team leader - one full-time LMHP with three years of experience in the provision of mental health services to adults with serious mental illness or one full-time registered QMHP-A with at least three years of experience in the provision of mental health services to adults with serious mental illness who was employed by the provider as a team leader prior to July 1, 2020. The team leader shall oversee all aspects of team operations and shall provide direct services to individuals in the community.

b. Nurses - ACT nurses shall be full-time employees or contractors with the following minimum qualifications: a registered nurse shall have one year of experience in the provision of mental health services to adults with serious mental illness; or a licensed practical nurse shall have three years of experience in the provision of mental health services to adults with serious mental illness.

(1) Small ACT teams shall have at least one full-time nurse, who shall be either an RN or an LPN;

(2) Medium ACT teams shall have at least one full-time RN, and at least one additional full-time nurse who shall be an LPN or RN; and

(3) Large ACT teams shall have at least one full-time RN and at least two additional full-time nurses who shall be LPNs or RNs.

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c. Vocational specialist - one full-time vocational specialist, who shall be a registered QMHP with demonstrated expertise in vocational services through experience or education.

d. Co-occurring disorder specialist - one full-time co-occurring disorder specialist, who shall be a LMHP, registered QMHP, or certified substance abuse specialist (CSAC) with training or experience working with adults with co-occurring serious mental illness and substance use disorder.

e. ACT peer specialists - one or more full-time equivalent peer recovery specialists who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a certified peer recovery specialist (CPRS) or shall become certified in the first year of employment. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting each individual's recovery goals.

f. Program assistant - one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and perform administrative support activities.

g. Psychiatric care provider - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia or a psychiatric nurse practitioner practicing within the scope of practice as defined in 18VAC90-30-120. An equivalent ratio of 16 hours of psychiatric time per 50 individuals served must be maintained. The psychiatric care provider shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

h. Generalist clinical staff - additional clinical staff with the knowledge, skill, and ability required, based on the population and age of individuals being served, to carry out rehabilitation and support functions, at least 50% of whom shall be LMHPs, QMHP-As, QMHP-Es, or OPPMHs.

(1) Small ACT teams shall have at least one generalist clinical staff;

(2) Medium ACT teams shall have at least two generalist clinical staff; and

(3) Large ACT teams shall have at least three generalist clinical staff.

## 5. Staff to individual ratios for ACT Teams:

a. Small ACT teams shall maintain a caseload of no more than 50 individuals and shall maintain at least one staff member per eight individuals, in addition to a psychiatric care provider and a program assistant.

b. Medium ACT teams shall maintain a caseload of no more than 74 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

c. Large ACT teams shall maintain a caseload of no more than 120 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

B. ICT and PACT ACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations.

C. ICT teams shall operate a minimum of eight hours per day, five days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT ACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and eight hours each weekend day and each holiday.

D. The ICT or PACT ACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily.

E. The PACT ACT team shall ~~operate an after-hours on-call system and be available to individuals by telephone or in person~~ have 24-hour responsibility for directly responding to psychiatric crises, including meeting the following criteria:

1. The team shall be available to individuals in crisis 24 hours per day, seven days per week, including in person when needed as determined by the team;

2. The team shall be the first-line crisis evaluator and responder for individuals served by the team; and

3. The team shall have access to the practical, individualized crisis plans developed to help them address crises for each individual receiving services.

## **12VAC35-105-1380. Contacts.**

A. The ICT and PACT ACT team shall have ~~the~~ sufficient capacity to provide multiple contacts per week to individuals experiencing severe symptoms or significant problems in daily living, ~~for an~~. The team shall provide a minimum aggregate average of three contacts per individual per week. A minimum aggregate average of two hours per individual per week shall be face to face.

B. Each individual receiving ICT or PACT ACT services shall be seen face-to-face by an employee or contractor; ~~or the employee or contractor should attempt to make contact as specified in the individual's ISP. Providers shall document all attempts to make contact, and if contact is not made, the reasons why contact was not made.~~

**12VAC35-105-1390. ICT and PACT ACT service daily operation and progress notes.**

A. ICT teams and PACT ACT teams shall conduct daily organizational meetings Monday through Friday at a regularly scheduled time to review the status of all individuals and the outcome of the most recent employee or contractor contact, assign daily and weekly tasks to employees and contractors, revise treatment plans as needed, plan for emergency and crisis situations, and to add service contacts that are identified as needed.

B. A daily log that provides a roster of individuals served in the ICT or PACT ACT services program and documentation of services provided and contacts made with them shall be maintained and utilized in the daily team meeting. There shall also be at least a weekly individual progress note documenting services provided in accordance with the ISP or attempts to engage the individual in services.

**12VAC35-105-1410. Service requirements.**

~~Providers~~ ICT and ACT shall document that the following services are provided consistent with the individual's assessment and ISP.

1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual;
2. Case management;
3. Nursing;
4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education;
5. Psychopharmacological treatment, administration, and monitoring;
6. ~~Substance abuse assessment and treatment for individuals with a co-occurring diagnosis of mental illness and substance abuse~~ Co-occurring diagnosis substance use disorder services that are nonconfrontational, trauma informed, person-centered, consider interactions of mental illness and substance use, and have goals determined by the individual;
7. ~~Individual supportive therapy~~ Empirically supported interventions and psychotherapy;
8. ~~Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time~~ Psychiatric rehabilitation, which may include skill-building, coaching, and access to necessary resources to help individuals with personal care, safety skills, money management, grocery shopping, cooking, food safety and storage, purchasing and caring for clothing, household maintenance and cleaning skills, social skills, and use of transportation and other community resources;

~~9. Supportive in-home services; 10. Work-related services to help find and maintain employment; that follow evidence-based supported employment principles, such as direct assistance with job development, locating preferred jobs, assisting the individual through the application process, and communicating with employers;~~

~~44. 10. Support for resuming education;~~

~~42. 11. Support, education, consultation, and skill-teaching to family members, and significant others, and broader natural support systems, which shall be directed exclusively to the well-being and benefit of the individual;~~

~~43. 12. Collaboration with families and assistance to individuals with children;~~

~~13. Assistance in obtaining and maintaining safe, decent, and affordable housing that follows the individual's preferences in level of independence and location, consistent with an evidence-based supportive housing model;~~

~~14. Direct support to help individuals secure and maintain decent, affordable housing that is integrated into the broader community and to obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; and~~

~~15. Mobile crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals;~~

~~16. Assistance in developing and maintaining natural supports and social relationships;~~

~~17. Medication education, assistance, and support; and~~

~~18. Peer support services, such as coaching, mentoring, assistance with self-advocacy and self-direction, and modeling recovery practices.~~

VA.R. Doc. No. R21-6076; Filed January 8, 2021, 1:30 p.m.

**Emergency Regulation**

**Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-925, 12VAC35-105-930, 12VAC35-105-960, 12VAC35-105-1000, 12VAC35-105-1110; adding 12VAC35-105-1420 through 12VAC35-105-1860).**

**Statutory Authority:** §§ 37.2-302 and 37.2-400 of the Code of Virginia.

**Effective Dates:** February 20, 2021, through August 19, 2022.

**Agency Contact:** Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804)

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371-4609, TDD (804) 371-8977, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

## Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the amendments align Virginia provider licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment.*

## **12VAC35-105-20. Definitions.**

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or
7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"ASAM" means the American Society of Addiction Medicine.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Clinically managed high-intensity residential care" means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

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

"Community geropsychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less

intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Credentialed addiction treatment professional" means a person who possesses one of the following credentials issued by the appropriate health regulatory board: (i) an addiction-credentialed physician or physician with experience or training in addiction medicine; (ii) a licensed nurse practitioner or a licensed physician assistant with experience or training in addiction medicine; (iii) a licensed psychiatrist; (iv) a licensed clinical psychologist; (v) a licensed clinical social worker; (vi) a licensed professional counselor; (vii) a licensed psychiatric clinical nurse specialist; (viii) a licensed psychiatric nurse practitioner; (ix) a licensed marriage and family therapist; (x) a licensed substance abuse treatment practitioner; (xi) a resident who is under the supervision of a licensed professional counselor (18VAC115-20-10), licensed marriage and family therapist (18VAC115-50-10), or licensed substance abuse treatment practitioner (18VAC115-60-10) and is registered with the Virginia Board of Counseling; (xii) a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology (18VAC125-20-10); or (xiii) a supervisee in social work who is under the supervision of a licensed clinical social worker and is registered with the Virginia Board of Social Work (18VAC140-20-10).

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

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"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

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

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all

aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.



"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensity of service" means the number, type, and frequency of staff interventions and other services provided during treatment at a particular level of care.

"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

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

"Location" means a place where services are or could be provided.

~~"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.~~

"Medically managed intensive inpatient service" means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided shall include directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed intensive inpatient treatment program.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally

permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted opioid treatment (~~Opioid treatment service~~)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication assisted treatment" or "MAT" means the use of FDA-approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders. Medication assisted treatment includes medication assisted opioid treatment.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MCHSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MCHSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may

include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or

treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

~~"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:~~

~~1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;~~

~~2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or~~

~~3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.~~

~~"Partial hospitalization service" means time limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.~~

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

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2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 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 the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to

measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

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"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;
2. An individual who is or was missing;
3. An emergency room visit;
4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;
5. Choking incidents that require direct physical intervention by another person;
6. Ingestion of any hazardous material; or
7. A diagnosis of:
  - a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;
  - b. A bowel obstruction; or
  - c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;
2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

~~"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.~~

"Specific high-intensity residential services" means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory

responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means ~~structured treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management. to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.~~ structured treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management. to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than 9

contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care,

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and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

## 12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Clinically managed high-intensity residential care;
3. Clinically managed low-intensity residential care;
4. Community gero-psychiatric residential;
- ~~3-~~ 5. ICF/IID;
- 4- 6. Residential crisis stabilization;
- ~~5-~~ 7. Nonresidential crisis stabilization;
- ~~6-~~ 8. Day support;
- ~~7-~~ 9. Day treatment, includes therapeutic day treatment for children and adolescents;

- ~~8-~~ 10. Group home and community residential;
- 9- 11. Inpatient psychiatric;
- ~~10-~~ 12. Intensive community treatment (ICT);
- ~~11-~~ 13. Intensive in-home;
- ~~12-~~ ~~Managed withdrawal, including medical detoxification and social detoxification;~~
- ~~13-~~ 14. Medically managed intensive inpatient service;
15. Medically monitored intensive inpatient treatment;
16. Medication assisted opioid treatment;
17. Mental health community support;
- ~~14-~~ ~~Opioid treatment/medication assisted treatment;~~
- ~~15-~~ 18. Mental health intensive outpatient;
19. Mental health outpatient;
20. Mental health partial hospitalization;
21. Emergency;
- ~~16-~~ ~~Outpatient;~~
- ~~17-~~ ~~Partial hospitalization;~~
- ~~18-~~ 22. Program of assertive community treatment (PACT);
- ~~19-~~ 23. Psychosocial rehabilitation;
- ~~20-~~ 24. Residential treatment;
- ~~21-~~ 25. Respite care;
- ~~22-~~ 26. Specific high-intensity residential;
27. Sponsored residential home;
- ~~23-~~ 28. Substance abuse residential treatment for women with children;
- 24- 29. Substance abuse intensive outpatient;
- ~~25-~~ 30. Substance abuse outpatient;
31. Substance abuse partial hospitalization;
32. Supervised living residential; and
- ~~26-~~ 33. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.



## Article 1

Medication Assisted Opioid Treatment (~~Opioid Treatment Services~~)**12VAC35-105-925. Standards for the evaluation of new licenses for providers of services to individuals with opioid addiction.**

A. Applicants requesting an initial license to provide a service for the treatment of opioid addiction through the use of methadone or any other opioid treatment medication or controlled substance shall supply information to the department that demonstrates the appropriateness of the proposed service in accordance with this section.

B. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia.

C. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

D. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;
2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;
3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;
4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;
5. The proposed site can accommodate individuals during periods of inclement weather;
6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and
7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

E. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program director shall be licensed or certified by the applicable Virginia health regulatory board or by a

nationally recognized certification board or eligible for this license or certification with relevant training, experience, or both, in the treatment of individuals with opioid addiction;

2. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year a course of study in opiate addiction that is approved by the department;

3. A minimum of one pharmacist;

4. Nurses;

5. Counselors shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board or eligible for this license or certification; and

6. Personnel to provide support services.

F. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;
2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;
3. Proposed hours and days of operation;
4. Plans for ~~on-site~~ onsite security; and
5. A diversion control plan for dispensed medications, including policies for use of drug screens.

G. Applicants shall, in addition to the requirements of 12VAC35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12VAC35-105-60 B and included in the individualized services plan:

1. Psychological services;
2. Social services;
3. Vocational services;
4. Educational services; and
5. Employment services.

H. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss their plans for operating in the area and to develop joint agreements, as appropriate.

I. Applicants shall provide policies and procedures that each individual served to be assessed every six months by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal, alternative therapies including other medication assisted

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treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

J. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue opioid treatment services.

K. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

L. The department shall conduct announced and unannounced reviews and complaint investigations in collaboration with the Virginia Board of Pharmacy and DEA to determine compliance with the regulations.

## **12VAC35-105-930. Registration, certification or accreditation.**

A. The medication assisted opioid treatment service shall maintain current registration or certification with:

1. The federal Drug Enforcement Administration;
2. The federal Department of Health and Human Services; and
3. The Virginia Board of Pharmacy.

B. A provider of medication assisted opioid treatment services shall maintain accreditation with an entity approved under federal regulations.

## **12VAC35-105-960. Physical examinations.**

A. The individual shall have a complete physical examination prior to admission to the service unless the individual is transferring from another licensed ~~opioid-agonist~~ medication assisted opioid treatment service. The results of serology and other tests shall be available within 14 days of admission.

B. Physical exams of each individual shall be completed annually or more frequently if there is a change in the individual's physical or mental condition.

C. The provider shall maintain the report of the individual's physical examination in the individual's service record.

D. On admission, all individuals shall be offered testing for AIDS/HIV. The individual may sign a notice of refusal without prejudice.

E. The provider shall coordinate treatment services for individuals who are prescribed benzodiazepines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.

## **12VAC35-105-1000. Preventing duplication of medication services.**

To prevent duplication of medication assisted opioid ~~medication~~ treatment services to an individual, the provider shall implement a written policy and procedures for contacting every medication assisted opioid treatment service within a 50-mile radius before admitting an individual.

### Article 2

## Medically ~~Managed Withdrawal~~ Monitored Intensive Inpatient Services

## **12VAC35-105-1110. Admission assessments.**

During the admission process, providers of ~~managed withdrawal services~~ medically monitored intensive inpatient services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;
2. Assess substances used and time of last use;
3. Determine time of last meal;
4. Administer a urine screen;
5. Analyze blood alcohol content or administer a breathalyzer; and
6. Record vital signs.

## **12VAC35-105-1420. (Reserved.)**

### Part VII

## Addition Medicine Service Requirements

### Article 1

## Medically Managed Intensive Inpatient

## **12VAC35-105-1430. Medically managed intensive inpatient staff criteria.**

A medically managed intensive inpatient program shall meet the following staff requirements:

1. Have a team of appropriately trained and credentialed professionals who provide medical management by physicians 24 hours a day, primary nursing care and observation 24 hours a day, and professional counseling services 16 hours a day;
2. Have an interdisciplinary team of appropriately credentialed clinical staff, including addiction-credentialed physicians, nurse practitioners, physician assistants, nurses, counselors, psychologists, and social workers, who assess and treat individuals with severe substance use disorders or addicted individuals with concomitant acute biomedical, emotional, or behavioral disorders;

3. Have staff who are knowledgeable about the biopsychosocial dimensions of addiction as well as biomedical, emotional, behavioral, and cognitive disorders;
4. Have facility-approved addiction counselors or licensed, certified, or registered addiction clinicians who administer planned interventions according to the assessed needs of the individual; and
5. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

**12VAC35-105-1440. Medically managed intensive inpatient program criteria.**

A medically managed intensive inpatient program shall meet the following programmatic requirements. The program shall:

1. Deliver services in a 24-hour medically managed, acute care setting and shall be available to all individuals within that setting;
2. Provide cognitive, behavioral, motivational, pharmacologic, and other therapies provided on an individual or group basis, depending on the individual's needs;
3. Provide, for the individual who has a severe biomedical disorder, physical health interventions to supplement addiction treatment;
4. Provide, for the individual who has stable psychiatric symptoms, individualized treatment activities designed to monitor the individual's mental health;
5. Provide planned clinical interventions that are designed to enhance the individual's understanding and acceptance of his addiction illness;
6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;
7. Provide health education services;
8. Make medication assisted treatment (MAT) available for all individuals admitted to the service. MAT may be provided by facility staff or coordinated through alternative resources; and
9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

**12VAC35-105-1450. Medically managed intensive inpatient admission criteria.**

Before a medically managed intensive inpatient program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and
2. Meet the admission criteria of Level 4.0 of ASAM, including the specific criteria for adult and adolescent populations.

**12VAC35-105-1460. Medically managed intensive inpatient discharge criteria.**

Before a medically managed intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 4.0 level of care;
2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or
3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

**12VAC35-105-1470. Medically managed intensive inpatient co-occurring enhanced programs.**

A. Medically managed intensive inpatient co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat the individual's co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

B. Medically managed intensive inpatient co-occurring enhanced programs shall offer individualized treatment activities designed to stabilize the individual's active psychiatric symptoms, including medication evaluation and management.

Article 2

Medically Monitored Intensive Inpatient Services

**12VAC35-105-1480. Medically monitored intensive inpatient services staff criteria.**

A medically monitored intensive inpatient treatment program shall meet the following staff requirements. The program shall:

1. Have a licensed physician to oversee the treatment process and ensure quality of care. A physician, a licensed nurse practitioner, or a licensed physician assistant shall be available 24 hours a day in person or by telephone. A physician shall assess the individual in person within 24 hours of admission;

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2. Offer 24-hour nursing care and conduct a nursing assessment on admission. The level of nursing care must be appropriate to the severity of needs of individuals admitted to the service;

3. Have interdisciplinary staff, including physicians, nurses, addiction counselors, and behavioral health specialists, who are able to assess and treat the individual and obtain and interpret information regarding the individual's psychiatric and substance use or addictive disorders;

4. Offer daily onsite counseling and clinical services. Clinical staff shall be knowledgeable about the biological and psychosocial dimensions of addiction and other behavioral health disorders with specialized training in behavior management techniques and evidence-based practices;

5. Have staff able to provide a planned regimen of 24-hour professionally directed evaluation, care, and treatment services;

6. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources; and

7. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

## **12VAC35-105-1490. Medically monitored intensive inpatient services program criteria.**

A medically monitored intensive inpatient treatment program shall meet the following programmatic requirements. The program shall:

1. Be made available to all individuals within the inpatient setting;

2. Provide a combination of individual and group therapy as deemed appropriate by a licensed mental health professional and included in an assessment and treatment plan. Such therapy shall be adapted to the individual's level of comprehension;

3. Make available medical and nursing services onsite to provide ongoing assessment and care of addiction needs;

4. Provide direct affiliations with other easily accessible levels of care or close coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed mental health professional and included in an assessment and treatment plan;

6. Provide educational and informational programming adapted to individual needs. The educational and informational programming shall include materials designed

to enhance the individual's understanding of addiction and may include peer recovery support services as appropriate;

7. Utilize random drug screening to monitor drug use and reinforce treatment gains;

8. Regularly monitor the individual's adherence in taking any prescribed medications; and

9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

## **12VAC35-105-1500. Medically monitored intensive inpatient admission criteria.**

Before a medically monitored intensive inpatient program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder of the DSM or addictive disorder of moderate to high severity; and

2. Meet the admission criteria of Level 3.7 of ASAM, including the specific criteria for adult and adolescent populations.

## **12VAC35-105-1510. Medically monitored intensive inpatient discharge criteria.**

A. Before a medically monitored intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.7 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

## **12VAC35-105-1520. Medically monitored intensive inpatient co-occurring enhanced programs.**

A. Medically monitored intensive inpatient co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services as indicated by the needs of individuals admitted to the service. A psychiatrist shall assess the individual by telephone within four hours of admission and in person with 24 hours following admission. An LMHP shall conduct a behavioral health-focused assessment at the time of admission. A registered nurse shall monitor the individual's

progress and administer or monitor the individual's self-administration of psychotropic medications.

B. Medically monitored intensive inpatient co-occurring enhanced programs shall be staffed by addiction psychiatrists and appropriately credentialed behavioral health professionals who are able to assess and treat co-occurring psychiatric disorders and who have specialized training in behavior management techniques and evidence based practices. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Medically monitored intensive inpatient co-occurring enhanced programs shall offer planned clinical activities designed to promote stabilization of the individual's behavioral health needs and psychiatric symptoms and to promote such stabilization, including medication education and management and motivational and engagement strategies.

### Article 3

#### Clinically Managed High-Intensity Residential Services

#### **12VAC35-105-1530. Clinically managed high-intensity residential services staff criteria.**

A clinically managed high-intensity residential care program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a licensed physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day seven days a week;
2. Offer onsite 24-hour-a-day clinical staffing by credentialed addiction treatment professionals and other allied health professionals, such as peer recovery specialists, who work in an interdisciplinary team;
3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment. Staff shall be able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and
4. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

#### **12VAC35-105-1540. Clinically managed high-intensity residential services program criteria.**

A clinically managed high-intensity residential care program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or

group therapy; programming; and psychoeducation as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach an individual the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or provide coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of an individual's stay shall be determined by the individual's condition and functioning;

9. Make a substance use treatment program available for all individuals; and

10. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff, or coordinated through alternative resources.

#### **12VAC35-105-1550. Clinically managed high-intensity residential services admission criteria.**

A. The individuals served by clinically managed high-intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

B. Before a clinically managed high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.5 of ASAM.

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## **12VAC35-105-1560. Clinically managed high-intensity residential services discharge criteria.**

Before a clinically managed high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;
2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or
3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

## **12VAC35-105-1570. Clinically managed high-intensity residential services co-occurring enhanced programs.**

A. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the individual's substance use disorder and any co-occurring mental disorder.

### Article 4

#### Clinically Managed Population-Specific High Intensity Residential Services

## **12VAC35-105-1580. Clinically managed population-specific high-intensity residential services staff criteria.**

A high-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day, seven days a week;

2. Have allied health professional staff onsite 24 hours a day. At least one clinician with competence in the treatment of substance use disorder shall be available onsite or by telephone 24 hours a day;

3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment and able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

## **12VAC35-105-1590. Clinically managed population-specific high-intensity residential services program criteria.**

A high-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services that shall include a range of cognitive, behavioral, and other therapies administered on an individual and group basis, medication education and management, educational groups, and occupational or recreation activities as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide daily professional addiction and mental health treatment services that may include relapse prevention, exploring interpersonal choices, peer recovery support, and development of a social network;

3. Provide services to improve the individual's ability to structure and organize the tasks of daily living and recovery. Such services shall accommodate the cognitive limitations within this population;

4. Make available medical, psychiatric, psychological, and laboratory and toxicology services through consultation or referral as indicated by the individual's condition;

5. Provide case management, including ongoing transition and continuing care planning;

6. Provide motivational interventions appropriate to the individual's stage of readiness to change and designed to address the individual's functional limitations;

7. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

8. Provide family and caregiver treatment services as deemed appropriate by an assessment and treatment plan;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Regularly monitor the individual's adherence to taking prescribed medications;

11. Make the substance use treatment program available to all individuals served by the residential care service; and

12. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

**12VAC35-105-1600. Clinically managed population-specific high-intensity residential services admission criteria.**

Before a clinically managed, population-specific, high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and
2. Meet the admission criteria of Level 3.3 of ASAM.

**12VAC35-105-1610. Clinically managed population-specific high-intensity residential services discharge criteria.**

A. Before a clinically managed, population-specific, high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.3 level of care;
2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or
3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

**12VAC35-105-1620. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs.**

A. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed psychiatrists and licensed mental health professionals who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental health disorder.

Article 5

Clinically Managed Low-Intensity Residential Services

**12VAC35-105-1630. Clinically managed low-intensity residential services staff criteria.**

A clinically managed low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide allied health professional staff onsite 24 hours a day;
2. Have clinical staff who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;
3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; and
4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

**12VAC35-105-1640. Clinically managed low-intensity residential services program criteria.**

A clinically managed low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to individuals, such as partial hospitalization or intensive outpatient treatment the focus of which is stabilizing the individual's substance use disorder. Services

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shall be designed to improve the individual's ability to structure and organize the tasks of daily living and recovery;

2. Ensure collaboration with care providers to develop an individual treatment plan for each individual with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the individual's stage of readiness to change and level of comprehension;

6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

7. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the individual's condition;

8. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

9. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

10. Utilize random drug screening to monitor progress and reinforce treatment gains;

11. Make a substance abuse treatment program available to all individuals; and

12. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

## **12VAC35-105-1650. Clinically managed low-intensity residential services admission criteria.**

Before a clinically managed low-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.1 of ASAM.

## **12VAC35-105-1660. Clinically managed low-intensity residential services discharge criteria.**

Before a clinically managed low-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by

the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

## **12VAC35-105-1670. Clinically managed low-intensity residential services co-occurring enhanced programs.**

A. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed licensed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

### Article 6

### Partial Hospitalization

## **12VAC35-105-1680. Substance abuse partial hospitalization services (ASAM LOC 2.5) staff criteria.**

A substance abuse partial hospitalization program shall meet the following staff requirements. The program shall:

1. Have an interdisciplinary team of addiction treatment professionals, including counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians treating individuals in this level shall have specialty training or experience in addiction medicine;

2. Have staff able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain



the uses of psychotropic medications and their interactions with substance-related disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

**12VAC35-105-1690. Substance abuse partial hospitalization services program criteria.**

A substance abuse partial hospitalization program shall meet the following programmatic requirements. The program shall:

1. Offer no fewer than 20 hours of programming per week in a structured program. Services may include individual and group counseling, medication management, family therapy, peer recovery support services, educational groups, or occupational and recreational therapy;

2. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

3. Provide medical and nursing services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

4. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide educational and informational programming adaptable to individual needs;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning;

9. Make emergency services available by telephone 24 hours a day, seven days a week when the program is not in session; and

10. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources.

**12VAC35-105-1700. Substance abuse partial hospitalization admission criteria.**

Before a substance abuse partial hospitalization program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.5 of ASAM, including the specific criteria for adult and adolescent populations.

**12VAC35-105-1710. Substance abuse partial hospitalization discharge criteria.**

Before a substance abuse partial hospitalization program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.5 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

**12VAC35-105-1720. Substance abuse partial hospitalization co-occurring enhanced programs.**

A. Substance abuse partial hospitalization co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse partial hospitalization co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat co-occurring mental disorders. Intensive case management shall be delivered by cross-trained, interdisciplinary staff through mobile outreach and shall involve engagement-oriented addiction treatment and psychiatric programming. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse partial hospitalization co-occurring enhanced programs shall offer intensive case management, assertive community treatment, medication management, and psychotherapy.

Article 7  
Intensive Outpatient Services

**12VAC35-105-1730. Substance abuse intensive outpatient services staff criteria.**

A substance abuse intensive outpatient services program shall meet the following staff requirements. The program shall:

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1. Be staffed by interdisciplinary team of appropriately credentialed addiction treatment professionals, including counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians shall have specialty training or experience in addiction medicine or addiction psychiatry;

2. Have program staff that are able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have program staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain the uses of psychotropic medications and their interactions with substance use and other addictive disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

## **12VAC35-105-1740. Substance abuse intensive outpatient services program criteria.**

A substance abuse intensive outpatient program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of three service hours per service day to achieve no fewer than nine hours and no more than 19 hours of programming per week in a structured environment;

2. Ensure psychiatric and other medical consultation shall be available within 24 hours by telephone and within 72 hours in person;

3. Offer consultation in case of emergency related to an individual's substance use disorder by telephone 24 hours a day, seven days a week when the treatment program is not in session;

4. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide education and informational programming adaptable to individual needs and developmental status;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning; and

9. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources.

## **12VAC35-105-1750. Substance abuse intensive outpatient services admission criteria.**

Before a substance abuse intensive outpatient service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.1 of ASAM, including the specific criteria for adult and adolescent populations.

## **12VAC35-105-1760. Substance abuse intensive outpatient services discharge criteria.**

Before a substance abuse intensive outpatient service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

## **12VAC35-105-1770. Substance abuse intensive outpatient services co-occurring enhanced programs.**

A. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse intensive outpatient services co-occurring enhanced programs shall be staffed by appropriately credential mental health professionals who assess and treat co-occurring mental disorders. Capacity to consult with an addiction psychiatrist shall be available. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer intensive case management,

assertive community treatment, medication management, and psychotherapy.

## Article 8

### Substance Abuse Outpatient Services

#### **12VAC35-105-1780. Substance abuse outpatient services staff criteria.**

Substance abuse outpatient service programs shall meet the following staff requirements. The program shall:

1. Have appropriately credentialed or licensed treatment professionals who assess and treat substance-related mental and addictive disorders;
2. Have program staff who are capable of monitoring stabilized mental health problems and recognizing any instability of individuals with co-occurring mental health conditions;
3. Provide medication management services by a licensed independent practitioner with prescribing authority; and
4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

#### **12VAC35-105-1790. Substance abuse outpatient service program criteria.**

Substance abuse outpatient service programs shall meet the following programmatic requirements. The program shall:

1. Offer no more than nine hours of programming a week;
2. Ensure emergency services shall be available by telephone 24 hours a day, seven days a week;
3. Provide individual or group counseling, motivational enhancement, family therapy, educational groups, occupational and recreational therapy, psychotherapy, addiction and pharmacotherapy as indicated by each individual's needs;
4. For individuals with mental illness, ensure the use of psychotropic medication, mental health treatment and that the individual's relationship to substance abuse disorders shall be addressed as the need arises;
5. Provide medical, psychiatric, psychological, laboratory, and toxicology services onsite or through consultation or referral. Medical and psychiatric consultation shall be available within 24 hours by telephone, or if in person, within a timeframe appropriate to the severity and urgency of the consultation requested;
6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services; and

7. Ensure through documentation that the duration of treatment varies with the severity of the individual's illness and response to treatment.

#### **12VAC35-105-1800. Substance abuse outpatient service admission criteria.**

Before a substance abuse outpatient service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and
2. Meet the admission criteria of Level 1.0 of ASAM, including the specific criteria for adult and adolescent populations.

#### **12VAC35-105-1810. Substance abuse outpatient services discharge criteria.**

Before a substance abuse outpatient service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 1.0 level of care;
2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or
3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

#### **12VAC35-105-1820. Substance abuse outpatient services co-occurring enhanced programs.**

A. Substance abuse outpatient services co-occurring enhanced programs shall offer ongoing intensive case management for highly crisis-prone individuals with co-occurring disorders.

B. Substance abuse outpatient services co-occurring enhanced programs shall include credentialed mental health trained personnel who are able to assess, monitor, and manage the types of severe and chronic mental disorders seen in a level 1 setting as well as other psychiatric disorders that are mildly unstable. Staff shall be knowledgeable about management of co-occurring mental and substance-related disorders, including assessment of the individual's stage of readiness to change and engagement of individuals who have co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

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C. Substance abuse outpatient services co-occurring enhanced programs shall offer therapies to actively address, monitor, and manage psychotropic medication, mental health treatment, and interaction with substance-related and addictive disorders.

## Article 9

### Medication Assisted Opioid Treatment Program

#### **12VAC35-105-1830. Medication assisted opioid treatment staff criteria.**

Medication assisted opioid treatment programs shall meet the following staff requirements. The program shall:

1. Have linkage with or access to psychological, medical, and psychiatric consultation;
2. Have access to emergency medical and psychiatric care through affiliations with more intensive levels of care;
3. Have access to physical evaluations and ongoing primary medical care;
4. Have the ability to conduct or arrange for appropriate laboratory and toxicology tests; and
5. Ensure all clinical staff, whether employed by the provider or available through consultation, contract, or other means, are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

#### **12VAC35-105-1840. Medication assisted opioid treatment program criteria.**

Medication assisted opioid treatment programs shall meet the following programmatic requirements. The program shall:

1. Provide individualized, patient-centered assessment and treatment, which may include peer recovery support services;
2. Provide case management, including medical monitoring and coordination, with onsite and offsite treatment services provided as needed;
3. Provide psychoeducation, including HIV/AIDS education and other health education services;
4. Assess, order, administer, reassess, and regulate medication and dose levels appropriate to the individual; supervise withdrawal management from opioid analgesics, including methadone or buprenorphine; and oversee and facilitate access to appropriate treatment;
5. Monitor drug testing that is to be done a minimum of eight times per year; and
6. Comply with 12VAC35-105-925 through 12VAC35-105-1050.

#### **12VAC35-105-1850. Medication assisted opioid treatment admission criteria.**

Before a medication assisted opioid treatment program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for severe opioid use disorder; and
2. Meet the admission criteria of Level 1.0 of ASAM.

#### **12VAC35-105-1860. Medication assisted opioid treatment discharge criteria.**

Before a medication assisted opioid treatment program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM OTS level of care;
2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or
3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

#### **DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-105)**

The ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition, American Society of Addiction Medicine, [asam.org](http://asam.org)

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, SW, Suite 900 Washington, DC 20024, [psychiatry.org](http://psychiatry.org)

VA.R. Doc. No. R21-6439; Filed January 8, 2021, 1:31 p.m.

### **Final Regulation**

**Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-675).**

**Statutory Authority: § 37.2-203 of the Code of Virginia.**

**Effective Date: March 4, 2021.**

**Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).**

Summary:

*The amendments allow case management providers a 30-day grace period and other mental health providers a 15-day grace period for documentation of an individualized services plan, aligning the regulation with Medicaid timeframe requirements.*

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.

**12VAC35-105-675. Reassessments and ISP reviews.**

A. Reassessments shall be completed at least annually and any time there is a need based on changes in the medical, psychiatric, behavioral, or other status of the individual.

B. Providers shall complete changes to the ISP as a result of the assessments.

C. The provider shall update the ISP at least annually and any time assessments identify risks, injuries, needs, or a change in status of the individual.

D. The provider shall ~~review complete quarterly reviews of~~ the ISP at least every three months from the date of the implementation of the comprehensive ISP ~~or whenever there is a revised assessment based upon the individual's changing needs or goals.~~

1. These reviews shall evaluate the individual's progress toward meeting the ISP's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.

2. These reviews shall document evidence of progression toward or achievement of a specific targeted outcome for each goal and objective.

3. For goals and objectives that were not accomplished by the identified target date, the provider and any appropriate treatment team members shall meet to review the reasons for lack of progress and provide the individual an opportunity to make an informed choice of how to proceed. Documentation of the quarterly review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed, with the exception of case management services. Case management quarterly reviews shall be added to the individual's record no later than 30 calendar days from the date the review was due.

VA.R. Doc. No. R19-5541; Filed January 8, 2021, 1:19 p.m.



**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF ACCOUNTANCY**

**Final Regulation**

Title of Regulation: **18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-20, 18VAC5-22-40, 18VAC5-22-50, 18VAC5-22-70, 18VAC5-22-90, 18VAC5-22-120, 18VAC5-22-170, 18VAC5-22-180; adding 18VAC5-22-91).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Effective Date: March 3, 2021.

Agency Contact: Nancy Glynn, Executive Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-8540, FAX (804) 527-4409, TDD (804) 367-9753, or email [nancy.glynn@boa.virginia.gov](mailto:nancy.glynn@boa.virginia.gov).

Summary:

*As the result of a periodic review, the amendments require that certified public accountant (CPA) licensees notify the board within 30 days of (i) any administrative disciplinary action that the licensee is the subject of or party to before any court, agency of the state or federal government, branch of the United States armed forces, or before the American Institute of Certified Public Accountants, the Virginia Society of Certified Public Accountants, or their successors; (ii) any conviction concerning a felony or misdemeanor, regardless of whether sentence is imposed, suspended, or executed; (iii) any guilty plea or plea of nolo contendere; (iv) any final judgment rendered against the holder in a civil court of law; or (v) any receipt of a peer review report or a Public Company Accounting Oversight Board firm inspection report containing criticisms of or identifying potential defects in the firm's quality control systems.*

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.

**18VAC5-22-20. Fees.**

A. The board shall charge the following fees for services it provides:

Processing an initial application to take one or more sections of the CPA examination	\$120
Processing additional applications to take one or more sections of the CPA examination	\$20
Processing an application for issuance of a Virginia license to a person	\$75
Processing an application for issuance of a Virginia license to a firm	\$100

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Processing an application for the timely renewal of a person's Virginia license except as provided in subsection B of 18VAC5-22-180	\$60
Processing an application for the timely renewal of a firm's Virginia license except as provided in subsection B of 18VAC5-22-180	\$75
Additional fee for processing an application for the renewal of a person's Virginia license that is not timely	\$100
Additional fee for processing an application for the renewal of a firm's Virginia license that is not timely	\$100
Processing an application for reinstatement of a person's Virginia license	\$350
Processing an application for reinstatement of a firm's Virginia license	\$500
Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia	\$350
Processing an application for lifting the suspension of the privilege of providing attest services, compilation services, or financial statement preparation services for persons or entities located in Virginia	\$500
Providing or obtaining information about a person's grades on sections of the CPA examination	\$25
Processing requests for verification that a person or firm holds a Virginia license:	
1. Online request	\$25
2. Manual request	\$50
Providing an additional CPA wall certificate	\$25
Additional fee for not responding within 30 calendar days to any request for information by the board under subsection A of 18VAC5-22-170	\$100
Additional fee for not using the online payment option for any service provided by the board	\$25

B. All fees for services the board provides are due when the service is requested and are nonrefundable.

C. Any original application for a CPA license in Virginia will expire six years from the original application date, and a new application with the corresponding fees and requirements will need to be submitted.

## **18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the**

### **CPA title or to or on behalf of an employer using the CPA title.**

For the purpose of determining whether a person who holds a Virginia license is providing services to the public or to or on behalf of an employer, those terms are to be defined in accordance with § 54.1-4400 of the Code of Virginia.

### **18VAC5-22-50. Determining whether the principal place of business of a person or of a firm is in Virginia.**

Complying with subdivision A 1 of § 54.1-4409.1, subsection B of § 54.1-4411, or subsection B of § 54.1-4412.1 of the Code of Virginia requires the person or firm to use reasonable judgment in determining whether Virginia is the principal place of business in which:

1. The person provides services to the public; or
2. The firm provides attest services ~~or~~ compilation services, or financial statement preparation services.

The determination shall be reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. The determination shall be reconsidered for changes in facts and circumstances that are not temporary.

### **18VAC5-22-70. Education.**

A. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.

B. For the purpose of complying with subsection A of this section and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:

1. 24 semester hours of accounting courses, ~~including that~~ must include courses in auditing, financial accounting, management accounting, and taxation; and
2. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

### **18VAC5-22-90. Continuing professional education.**

A. If during the current calendar year a person holds a Virginia license and has not been granted an exemption from meeting continuing professional education requirements by the board pursuant to subsection C of this section, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with

the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours, which conforms to the requirements prescribed by the board. If a person holds an active license in another state and his principal place of business is not located in Virginia and:

~~1. If the person also holds the license of another state and Virginia is not his principal place of business, the ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license. The other state has a continuing professional education requirement for ethics, he is eligible for an exemption from meeting the continuing professional education requirements of Virginia if he meets the continuing professional education requirements in the other state in which he holds an active license, or~~

~~2. Otherwise, the ethics course shall conform to the requirements. The other state does not have a continuing professional education requirement for ethics, he is eligible for an exemption from meeting the continuing professional education requirements of Virginia if he meets the continuing professional education requirements in the other state in which he holds an active license and in addition he meets the continuing professional education requirement for ethics in Virginia as prescribed by the board.~~

B. If during the current calendar year a person who holds a Virginia license provided services to the public or to or on behalf of an employer, has not been granted an exemption by the board pursuant to subsection C of this section, and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall determine whether he has complied with the requirements of subsection A of this section as follows:

1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of subsection A of this section for the three-calendar-year period ending with the current calendar year.

2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by subsection A of this section for the current calendar year, including an ethics course of at least two hours.

3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-

calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by subsection A of this section for each of the years, including for each year an ethics course of at least two hours.

C. If during the current calendar year a person who holds a Virginia license did not provide services to the public or to or on behalf of an employer, including on a volunteer basis, and has demonstrated to the board that he does not provide those services been granted an exemption from continuing professional education requirements in writing by the board, he is not required to have obtained meet the continuing professional education requirements during the three-calendar-year period ending with the current calendar year for which the exemption was granted. Any person who holds a Virginia license to whom an exemption has been granted shall annually affirm and certify to the board his continued eligibility for the exemption ~~in that he does not provide services to the public or to or on behalf of an employer.~~ However, in order to begin providing those services to the public or to or on behalf of an employer, including on a volunteer basis:

1. He is required to have obtained at least 120 hours of continuing professional education prior to providing ~~the~~ services, including an ethics course of at least two hours.

2. The ethics course shall conform to the requirements prescribed by the board for the calendar year in which the person begins providing ~~the~~ services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

D. If a person who has not held the license of any state applies for a Virginia license within the same calendar year in which he passes the CPA examination, he does not need to obtain continuing professional education for that calendar year. If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.

1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.

2. The ethics course shall conform to the requirements prescribed by the board for the calendar year in which the person applies for the license.

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Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

~~E. Continuing professional education acceptable to the board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The acceptable forums are:~~

- ~~1. Attending seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;~~
- ~~2. Taking courses at an accredited institution for credit;~~
- ~~3. Completing self-study courses, provided there is a method for determining that the person met the learning objectives;~~
- ~~4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials;~~
- ~~5. Writing material that is relevant to providing services to or on behalf of an employer or to the public that is formally reviewed by an independent party and that is published in a book, magazine, or similar publication; and~~
- ~~6. Passing examinations and obtaining certifications that have been approved by the board.~~

~~Whether other forums are acceptable shall be determined by the board on a case-by-case basis.~~

~~F. In determining whether a person has obtained the required number of hours of continuing professional education:~~

- ~~1. Repeat presentations shall not be considered.~~
- ~~2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar year period.~~
- ~~3. One semester hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter hour of credit constitutes 10 hours of continuing professional education.~~
- ~~4. Credit for examination and certification shall be awarded for the calendar year in which the examination was passed and certification was received. If passage of the examination and certification occur in different calendar years, credit shall be awarded for the calendar year in which the examination was passed. The board shall determine how many hours are credited per certification.~~

~~5. No more than 60 hours from examination and certification shall be considered during each three-calendar year period.~~

~~G. Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.~~

## **18VAC5-22-91. Documentation of continuing professional education.**

A. Continuing professional education acceptable to the board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The acceptable forums are:

1. Attending seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;
2. Completing courses at an accredited institution for credit;
3. Completing self-study courses, provided there is a method for determining that the person met the learning objectives;
4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials;
5. Writing material that is relevant to providing services to the public or to or on behalf of an employer that is formally reviewed by an independent party and that is published in a book, magazine, or similar publication; and
6. Passing examinations and obtaining certifications that have been approved by the board.

Whether other forums are acceptable shall be determined by the board on a case-by-case basis.

B. In determining whether a person has obtained the required number of hours of continuing professional education:

1. Repeat presentations, examinations, and courses shall not be considered.
2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.
3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.
4. Credit for examination and certification shall be awarded for the calendar year in which the examination was passed and certification was received. If passage of the examination



and certification occur in different calendar years, credit shall be awarded for the calendar year in which the examination was passed. The board shall determine how many hours are credited per certification.

5. No more than 60 hours from examination and certification shall be considered during each three-calendar-year period.

C. Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

D. Evidence of satisfactory completion of the continuing professional education requirements shall include:

1. Certificates of completion or some other form of documentation from the continuing professional education sponsor, including the sponsor's name, participant's name, course or content name, date taken, and hours of continuing professional education earned;

2. Official transcripts of the college or university for earning course credit at an accredited college or university;

3. A syllabus or agenda and a signed statement from the sponsoring individual or sponsoring organization indicating the length of the presentation for making a presentation;

4. A copy of the published article, book, written material, or other proof of publication for producing written material relevant to CPAs who provide services to the public or to or on behalf of an employer; or

5. In the case of exams and certifications that have been approved by the board, a letter from the administering organization that identifies the passage of the exam or the certification, the participant's name, and the date of passage or certification;

The board shall not accept receipts, registration confirmations, canceled checks, outlines, presentation slides, or sign-in sheets as valid evidence of satisfactory completion of the continuing professional education requirements. Whether other documentation is acceptable shall be determined by the board on a case-by-case basis.

E. A person who holds a Virginia license shall retain evidence of his satisfactory completion of the continuing professional education requirements for a period of four years preceding the current calendar year.

F. One continuing professional education hour is satisfied by 50 minutes of participation in a program of continuing professional education.

**18VAC5-22-120. Supervision of firm personnel.**

To comply with subdivision C 2 of § 54.1-4412.1 of the Code of Virginia, a person's work must be planned, supervised, and

reviewed by a person who either (i) holds a an active Virginia license or (ii) holds the active license of another state and complies with the substantial equivalency provisions of § 54.1-4411 of the Code of Virginia.

**18VAC5-22-170. Communication with the board.**

A. Pursuant to § 54.1-4425 of the Code of Virginia, each licensee or applicant shall respond within 30 calendar days to any board request for information regarding compliance with any statutes or regulations pertaining to the board or any of the programs that may be in another title of the Code of Virginia for which the board has regulatory responsibility. When the requested response is not produced by the licensee or applicant within 30 calendar days, this nonproduction shall be deemed a violation of this rule, unless otherwise determined by the board.

B. Each holder of a Virginia license shall notify the board in writing within 30 calendar days of ~~any~~:

1. Any change in the holder's legal name or in the postal and electronic addresses where the person or firm may be reached;

2. Any administrative disciplinary action that the holder is the subject of or party to before any court, agency of the state or federal government, branch of the armed forces of the United States of America, or before the American Institute of Certified Public Accountants, the Virginia Society of Certified Public Accountants, or their successors;

3. Any conviction concerning a felony or misdemeanor, regardless of whether sentence is imposed, suspended, or executed;

4. Any guilty plea or plea of nolo contendere;

5. Any final judgment rendered against the holder in a civil court of law; or

6. Any receipt of a peer review report or a PCAOB firm inspection report containing criticisms of or identifying potential defects in the firm's quality control systems.

~~C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. The responsibility for renewing a Virginia license is on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice~~ Upon the renewal, reinstatement of, or the application for a Virginia license each person or entity shall notify the board in writing if any of the sanctions in subsection B of this section have occurred.

**18VAC5-22-180. Issuance, renewal, and reinstatement of licenses.**

~~A. Any Virginia license issued, renewed, or reinstated on or after February 26, 2018, and on or before June 30, 2018, shall expire on June 30, 2019, and its holder shall pay the fee~~

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prescribed in 18VAC5-22-20 upon submission of a completed license application.

B. Any Virginia license expiring between July 31, 2018, and on or before March 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2019. Any Virginia license expiring between April 30, 2019, and on or before May 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2020.

1. A person who holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.

Current Expiration Date	Renewal Fee	Expiration Date Following Renewal
July 31, 2018	\$55	June 30, 2019
August 31, 2018	\$50	June 30, 2019
September 30, 2018	\$45	June 30, 2019
October 31, 2018	\$40	June 30, 2019
November 30, 2018	\$35	June 30, 2019
December 31, 2018	\$30	June 30, 2019
January 31, 2019	\$25	June 30, 2019
February 28, 2019	\$20	June 30, 2019
March 31, 2019	\$15	June 30, 2019
April 30, 2019	\$60	June 30, 2020
May 31, 2019	\$60	June 30, 2020

2. A firm that holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.

Current Expiration Date	Renewal Fee	Expiration Date Following Renewal
July 31, 2018	\$68	June 30, 2019
August 31, 2018	\$62	June 30, 2019
September 30, 2018	\$56	June 30, 2019
October 31, 2018	\$50	June 30, 2019
November 30, 2018	\$43	June 30, 2019
December 31, 2018	\$37	June 30, 2019
January 31, 2019	\$31	June 30, 2019
February 28, 2019	\$25	June 30, 2019

March 31, 2019	\$18	June 30, 2019
April 30, 2019	\$75	June 30, 2020
May 31, 2019	\$75	June 30, 2020

C. Any Virginia license issued or reinstated from July 1, 2018, to on or before March 31, 2019, shall expire on June 30, 2019, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application. Beginning April 1, 2019, any Virginia license issued or reinstated during the months of April, May, or June shall expire on June 30 of the succeeding calendar year, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application.

D. A. For Virginia licenses expiring on June 30, 2019, or later, the holder of a Virginia license shall annually renew his license on or before June 30 of each calendar year by submitting a completed license renewal application and paying to the board a renewal fee as prescribed in 18VAC5-22-20.

B. If a person or entity applies for an initial license or reinstatement on or after March 1 of a calendar year, the license will not expire until June 30 of the following calendar year.

C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. The responsibility for renewing a Virginia license is on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.

VA.R. Doc. No. R19-5755; Filed January 11, 2021, 8:26 a.m.

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

### Forms

**REGISTRAR'S 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.

**Title of Regulation:** 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC30-21)

~~Instructions/Cheeklist and Application for Audiology or Speech-Language Pathology Licensure in Virginia (rev. 3/2019)~~

~~Instructions/Checklist and Application for a Provisional License (rev. 3/2019)~~

~~Instructions/Checklist and Application for a School Speech-Language Pathologist without Virginia Board of Education Endorsement (rev. 3/2019)~~

~~Instructions/Checklist and Application for a School Speech-Language Pathologist with Virginia Board of Education Endorsement (rev. 3/2019)~~

~~Instructions/Checklist and Application for Reinstatement of an Expired Virginia License (rev. 3/2019)~~

~~Instructions/Checklist and Application for Reactivation of an Inactive Current License (rev. 3/2019)~~

~~Licensure Verification Form (rev. 3/2019)~~

~~Employment Verification Form (rev. 3/2019)~~

~~Continuing Education Reporting Form (rev. 3/2017)~~

~~Continuing Education (CE) Credit Form for Volunteer Practice (rev. 3/2019)~~

~~Request for Verification of a Virginia License Form (rev. 3/2019)~~

~~Name/Address Change Form (rev. 3/2019)~~

~~Sponsor Certification for Volunteer Registration Form (rev. 3/2019)~~

~~Application for Registration for Volunteer Practice (rev. 3/2019)~~

[Instructions/Checklist for Completing an Application to Practice as an Audiologist in Virginia \(Includes Provisional for Re-entry Into Practice\) \(rev. 6/2020\)](#)

[Instructions/Checklist for Application for Provisional License to Practice as an Audiologist in Virginia \(New Graduates Only\) \(rev. 6/2020\)](#)

[Instructions/Checklist for Application for Provisional License to Practice as a Speech-Language Pathologist in Virginia \(New Graduates Only\) \(rev. 6/2020\)](#)

[Instructions/Checklist for Completing an Application to Practice as a School Speech-Language Pathologist in Virginia \(rev. 6/2020\)](#)

[Instructions/Checklist for Reinstatement of an Expired License \(rev. 6/2020\)](#)

[Instructions/Checklist for Reactivating a Current Inactive License \(rev. 6/2020\)](#)

[Request for Verification of Out-of-State License \(rev. 6/2020\)](#)

[Employment Verification \(rev. 6/2020\)](#)

[Continuing Education Reporting Form \(rev. 6/2020\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 6/2020\)](#)

[Request for Verification of a Virginia License \(rev. 6/2020\)](#)

[Name/Address Change Form \(rev. 6/2020\)](#)

[Sponsor Certification for Volunteer Registration \(rev. 6/2020\)](#)

[Application for Registration to Volunteer Practice \(rev. 6/2020\)](#)

VA.R. Doc. No. R21-6617; Filed January 5, 2021, 2:04 p.m.

## BOARD OF DENTISTRY

### Forms

**REGISTRAR'S 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.

**Title of Regulation:** **18VAC60-21. Regulations Governing the Practice of Dentistry.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC60-21)

~~Instructions and Application for a Faculty License to Teach Dentistry (rev. 5/2019)~~

~~Instructions and Application for Registration for Volunteer Dental Practice (rev. 5/2019)~~

~~Instructions and Application for a Temporary Resident's License (rev. 5/2019)~~

~~Instructions and Application for a Temporary Dental Permit (rev. 5/2019)~~

~~Instructions and Application for a Permit to Administer Moderate Sedation (rev. 5/2019)~~

~~Instructions and Application for a Permit to Administer Deep Sedation/General Anesthesia (rev. 5/2019)~~

~~Instructions and Application for Reinstatement of a Permit to Administer Moderate Sedation or Deep Sedation/General Anesthesia (rev. 5/2019)~~

~~Instructions and Application for Certification to Perform Cosmetic Procedures (rev. 5/2019)~~

~~Instructions and Application for Reinstatement of Certification to Perform Cosmetic Procedures (rev. 5/2019)~~

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# Regulations

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~~Instructions and Application for Restricted Volunteer Dental License (rev. 5/2019)~~

~~Instructions and Application for Oral and Maxillofacial Surgeon Registration of Practice (rev. 5/2019)~~

~~Instructions and Application for Reinstatement of Oral and Maxillofacial Surgeon Registration of Practice (rev. 5/2019)~~

~~Instructions and Application for Registration of a Mobile Dental Facility or Portable Dental Operation (rev. 5/2019)~~

~~Instructions and Application for Reactivation of Dental License (rev. 5/2019)~~

~~Instructions and Application for Reinstatement of Dental License (rev. 5/2019)~~

~~Instructions for Filing Online Application for Licensure by Examination or Credentials for Dentists (rev. 4/2019)~~

[Instructions for a Faculty License to Teach Dentistry \(rev. 8/2020\)](#)

[Instructions for Registration for Volunteer Dental Practice \(rev. 8/2020\)](#)

[Instructions for a Temporary Resident's License \(rev. 8/2020\)](#)

[Instructions for a Temporary Dental Permit \(rev. 8/2020\)](#)

[Application for a Permit to Administer Moderate Sedation \(rev. 8/2020\)](#)

[Instructions for a Permit to Administer Deep Sedation/General Anesthesia \(rev. 8/2020\)](#)

[Instructions for Reinstatement of a Permit to Administer Moderate Sedation or Deep Sedation/General Anesthesia \(rev. 8/2020\)](#)

[Instructions for Certification to Perform Cosmetic Procedures \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Certification to Perform Cosmetic Procedures \(rev. 8/2020\)](#)

[Instructions for Restricted Volunteer Dental License \(rev. 8/2020\)](#)

[Instructions for Oral and Maxillofacial Surgeon Registration of Practice \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Oral and Maxillofacial Surgeon Registration of Practice \(rev. 8/2020\)](#)

[Instructions for Registration of a Mobile Dental Facility or Portable Dental Operation \(rev. 8/2020\)](#)

[Instructions for Reactivation of Dental License \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Dental License \(rev. 8/2020\)](#)

[Application Instructions for a Dental License \(rev. 11/2020\)](#)

VA.R. Doc. No. R21-6595; Filed January 5, 2021, 2:03 p.m.

## Forms

**REGISTRAR'S 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.

**Title of Regulation: 18VAC60-25. Regulations Governing the Practice of Dental Hygiene.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC60-25)

~~Instructions for Filing Online Application for Licensure by Examination or Credentials for Dental Hygienists (rev. 5/2019)~~

~~Instructions and Application for Registration for Dental Hygiene Volunteer Practice (rev. 5/2019)~~

~~Instructions and Application for Reactivation of Dental Hygienist (rev. 5/2019)~~

~~Instructions and Application for Reinstatement of Dental Hygienist License (rev. 5/2019)~~

~~Instructions and Application for Restricted Volunteer Dental Hygiene License (rev. 5/2019)~~

~~Instructions and Application for a Faculty License to Teach Dental Hygiene (rev. 5/2019)~~

~~Instructions and Application for a Temporary Dental Hygiene Permit (rev. 5/2019)~~

~~Continuing Education (CE) Credit Form for Volunteer Practice (rev. 5/2019)~~

[Application Instructions for Dental Hygienists \(rev. 11/2020\)](#)

[Instructions for Registration for Dental Hygiene Volunteer Practice \(rev. 8/2020\)](#)

[Instructions for Reactivation of Dental Hygienist License \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Dental Hygiene License \(rev. 8/2020\)](#)

[Instructions for Restricted Volunteer Dental Hygiene License \(rev. 8/2020\)](#)

[Instructions for a Faculty License to Teach Dental Hygiene \(rev. 8/2020\)](#)

[Instructions for a Temporary Dental Hygiene Permit \(rev. 8/2020\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 5/2019\)](#)

VA.R. Doc. No. R21-6610; Filed January 5, 2021, 2:02 p.m.

**Forms**

**REGISTRAR'S 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.

**Title of Regulation: 18VAC60-30. Regulations Governing the Practice of Dental Assistants.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## FORMS (18VAC60-30)

~~Instructions and Application for Registration as a Dental Assistant II (rev.5/2019)~~

~~Instructions and Application Reactivation of Dental Assistant II Registration (rev.5/2019)~~

~~Instructions and Application for Reinstatement of Dental Assistant II Registration (rev.5/2019)~~

[Instructions for Registration of Dental Assistant II \(rev. 8/2020\)](#)

[Instructions for Reactivation of Dental Assistant II Registration \(rev. 8/2020\)](#)

[Instructions for Reinstatement of Dental Assistant II Registration \(rev. 8/2020\)](#)

VA.R. Doc. No. R21-6609; Filed January 5, 2021, 2:03 p.m.

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS****Final Regulation**

**Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-10, 18VAC65-20-50, 18VAC65-20-60, 18VAC65-20-70, 18VAC65-20-130, 18VAC65-20-151 through 18VAC65-20-154, 18VAC65-20-170, 18VAC65-20-171, 18VAC65-20-240, 18VAC65-20-400, 18VAC65-20-435, 18VAC65-20-436, 18VAC65-20-440, 18VAC65-20-500, 18VAC65-20-510, 18VAC65-20-580, 18VAC65-20-700).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

**Effective Date:** March 3, 2021.

**Agency Contact:** Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email [fanbd@dhp.virginia.gov](mailto:fanbd@dhp.virginia.gov).

**Summary:**

*The amendments clarify and update provisions and include (i) a new definition for "affiliation" of a branch to the main establishment, (ii) an allowance for newly licensed persons to be exempt from continuing education for the first renewal, (iii) an allowance for a funeral establishment experiencing an emergency to utilize the building in another establishment until restoration, (iv) a requirement for a registered surface transportation and removal service to hold liability insurance, (v) an allowance for a crematory to test operation of a retort before it is registered, and (vi) establishment of grounds for disciplinary action in the case of an inappropriate sexual relationship between a supervisor and funeral intern.*

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

## Chapter 20

Regulations ~~Governing the Practice of the Board of Funeral Directors and Embalmers~~ **Services****18VAC65-20-10. Definitions.**

Words and terms used in this chapter shall have the definitions ascribed in § 54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Affiliation" or "affiliated" means a relationship involving a degree of common or subsidiary ownership between two establishments or entities.

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of § 54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board ~~which~~ that grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation container" means a container in which human remains are transported to the crematory and placed in the retort for cremation.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

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"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

"FTC" means the Federal Trade Commission.

"Manager of record" means a funeral service licensee or licensed funeral director who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

## **18VAC65-20-50. Posting of license.**

A. Each licensee shall post an original or photocopy of his license in a place conspicuous to consumers of funeral services in each establishment or branch where he ~~is employed~~ practices.

B. The establishment license shall be posted in a place conspicuous to consumers of funeral services.

## **18VAC65-20-60. Accuracy of information.**

A. All changes in the address of record or the public address, if different from the address of record, or in the name of a licensee or registrant shall be furnished to the board within 30 days after the change occurs.

B. Any change in ownership or manager of record for an establishment or crematory shall be reported to the board within 14 days of the change.

C. A surface transportation and removal service shall notify the board within ~~30~~ 14 days of any change in the name of the manager ~~on~~ of record with the board.

D. All notices required by law and by this chapter to be ~~mailed~~ provided by the board to any registrant or licensee shall be validly given when mailed to the latest address of record on file with the board and shall not relieve the licensee, funeral service intern, establishment, crematory, or firm of obligation to comply. Renewal notices may be mailed or sent electronically by the board.

## **18VAC65-20-70. Required fees.**

A. The following fees shall apply for initial licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$325
2. Funeral service establishment license	\$600
3. Surface transportation and removal service registration	\$325
4. Courtesy card	\$325
5. Crematory	\$250
6. Waiver of full-time manager requirement	\$150

B. The following fees shall apply for renewal of licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$225
2. Funeral service establishment license	\$400
3. Surface transportation and removal service registration	\$300
4. Courtesy card	\$300
5. Crematory	\$200
6. Waiver of full-time manager requirement	\$100
<u>7. Inactive funeral service, funeral director, or embalmer license</u>	<u>\$115</u>

C. The following fees shall apply for late renewal of licensure or registration up to one year following expiration:

1. License to practice funeral service or as a funeral director or an embalmer	\$75
2. Funeral service establishment license	\$135
3. Surface transportation and removal service registration	\$100
4. Courtesy card	\$100
5. Crematory	\$75
6. Waiver of full-time manager requirement	\$35
<u>7. Inactive funeral service, funeral director, or embalmer license</u>	<u>\$40</u>

D. The following fees shall apply for reinstatement of licensure or registration:

1. License to practice funeral service or as a funeral director or an embalmer	\$400
2. Establishment license	\$635
3. Surface transportation and removal service registration	\$425
4. Courtesy card	\$425
5. Crematory	\$275
6. Reinstatement following suspension	\$1,000
7. Reinstatement following revocation	\$2,000

E. Other fees.

1. Change of manager or establishment name	\$100
2. Verification of license or registration to another state	\$50
3. Duplicate license, registration, or courtesy card	\$25

4. Duplicate wall certificates	\$60
5. Change of ownership	\$100
6. Nonroutine reinspection (i.e., structural change to preparation room, change of location or ownership)	\$400
F. Fees for approval of continuing education providers.	
1. Application or renewal for continuing education provider	\$400
2. Late renewal of continuing education provider approval	\$100
3. Review of additional courses not included on initial or renewal application ( <u>per application for review of additional courses not per individual course</u> )	\$300

~~G. For each renewal in the two years after January 14, 2015, the following shortfall reduction fee shall be assessed:~~

<del>1. License to practice funeral service or as a funeral director or an embalmer</del>	<del>\$40</del>
<del>2. Funeral service establishment license</del>	<del>\$75</del>
<del>3. Surface transportation and removal service registration</del>	<del>\$60</del>
<del>4. Courtesy card</del>	<del>\$60</del>
<del>5. Crematory</del>	<del>\$40</del>
<del>6. Continuing education provider</del>	<del>\$75</del>

**18VAC65-20-130. Renewal of license; registration.**

A. A person, establishment, crematory, courtesy card holder, or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18VAC65-20-120, submit the renewal form and applicable fee.

1. In order to renew an active funeral service, funeral director, or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18VAC65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

3. In order to renew a courtesy card, the courtesy card holder shall provide documentation of current, unrestricted licensure for funeral service, funeral directing, or embalming from the licensing authority in the states in which the courtesy card holder is licensed to practice.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply

with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity ~~which~~ that fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18VAC65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

**18VAC65-20-151. Continued competency requirements for renewal of an active license.**

A. Funeral service licensees, funeral directors, or funeral embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts, and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell, or offer goods, products, or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

E. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure by examination in Virginia.

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## 18VAC65-20-152. Continuing education providers.

A. Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

1. Local, state, or federal government agencies;
2. Regionally accredited colleges and universities; or
3. Board-recognized national, regional, state, and local associations or organizations as follows:
  - a. National Funeral Directors Association and state chapters;
  - b. National Funeral Directors and Morticians Association and state chapters;
  - c. Association of Independent Funeral Homes of Virginia;
  - d. Cremation Association of North America;
  - e. American Board of Funeral Service Education;
  - f. International Conference of Funeral Service Examining Boards;
  - g. Virginia Morticians Association; and
  - h. Other similar associations or organizations as approved by action of the board.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit 60 days prior to offering a continuing education course:
  - a. Documentation of an instructional plan and course objectives for the continuing education course that ~~meet~~ meets the criteria set forth in 18VAC65-20-151 B;
  - b. A syllabus of the course ~~or courses~~ to be offered with the credentials of the course instructors, a description of each session, including number of continuing education hours; and
  - c. The continuing education provider fee set forth under 18VAC65-20-70.
2. Board approval of continuing education providers under this subsection shall expire on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the provider fee as required by the board.
3. ~~Continued~~ Renewed approval of a continuing education provider may be granted without submission of ~~the provider~~ an additional course review fee if the provider submits a statement that courses and instructors offered for the coming year will not change from the previous year. If there will be additions or alterations to the continuing education offerings of a provider, resubmission of course documentation and a ~~provider~~ an additional course review fee is required.

4. If additional courses are submitted for board approval beyond those courses submitted with an initial or renewal application, the continuing education provider shall remit the fee for review under 18VAC65-20-70.

C. Continuing education providers approved under subsection A or B of this section shall:

1. Maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of two years;
2. Monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and
3. Provide a certificate of completion for licensees who successfully complete a course.

## 18VAC65-20-153. Documenting compliance with continuing education requirements.

A. All licensees with active status are required to maintain original documentation of continuing education for a period of two years after the corresponding annual renewal period.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or
2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the subject and purpose of the courses as prescribed in 18VAC65-20-151 B, the maintenance of records and the relevance of the courses to the category of licensure is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

## 18VAC65-20-154. Inactive license.

A. A funeral service licensee, a funeral director, or an embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee of ~~\$115~~, be issued an inactive license. ~~The fee for late renewal up to one year following expiration of an inactive license shall be \$40.~~

1. An inactive licensee shall not be entitled to perform any act requiring a license to practice funeral service in Virginia.



2. The holder of an inactive license shall not be required to meet continuing education requirements, except as may be required for reactivation in subsection B of this section.

B. A funeral service licensee, a funeral director, or an embalmer who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the year in which the license is being reactivated; and
2. Providing proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.

**18VAC65-20-170. Requirements for an establishment license.**

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the funeral service licensee or licensed funeral director designated by the ownership to be manager of record for the establishment shall be included on the license.

B. Except as provided in § 54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate manager of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least 30 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18VAC65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment and contain an attestation of the affiliation of the branch or chapel and the main establishment.

F. In the event of an emergency requiring the evacuation or discontinued use of a funeral establishment, the impacted establishment may be approved by the board to continue operations out of another licensed funeral establishment for a period of no more than 60 days. The impacted establishment may request an extension of emergency operations for an additional 30 days upon good cause shown. In requesting approval for conducting emergency operations under this section, the impacted funeral establishment shall submit documentation that identifies the manager of record for both the impacted establishment and establishment for emergency operations and any agreement for emergency usage.

**18VAC65-20-171. Responsibilities of the manager of record.**

A. Every funeral establishment shall have a manager of record who is employed full time by and in charge of the establishment.

B. The manager shall be fully accountable for the operation of the establishment as it pertains to the laws and regulations governing the practice of funeral services, to include ~~but not be limited to:~~

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-700 during the period in which he serves as manager of record; ~~and~~
3. Reporting to the board of any changes in information as required by 18VAC65-20-60; and
4. Correcting or seeking corrections of any deficiencies identified during the course of an inspection of the establishment.

**18VAC65-20-240. Requirements for funeral service licensure by examination.**

A. Application requirements. ~~4-~~ Applicants shall submit official mortuary school transcripts and national examination board scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

~~2. An individual applying for the state examination shall submit the application package not less than 30 days prior to an examination date. The board may, for good cause shown by the applicant, waive the time for the filing of any application.~~

B. National examination requirements. Prior to applying for licensure by examination, every applicant shall pass the National Board Examination of the International Conference of Funeral Service Examining Boards.

C. State examination requirements. All applicants shall pass the Virginia State Board Examination.

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## **18VAC65-20-400. Registration of surface transportation and removal services.**

All persons applying to own or operate a surface transportation and removal service, according to requirements of § 54.1-2819 of the Code of Virginia, shall submit an application package for registration which shall include:

1. A completed and signed application;
2. The fee prescribed in 18VAC65-20-70 A 3;
3. Additional documentation as may be required by the board to determine eligibility of the applicant, including, ~~but not limited to,~~ evidence of training of the service manager and staff in compliance with standards of the Occupational Safety and Health Administration (OSHA) for universal precautions and ~~blood-borne~~ bloodborne pathogens, and proof of bonding or liability insurance coverage related to the operation of the service; and
4. The name of the manager for the service.

## **18VAC65-20-435. Registration of crematories.**

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be the crematory manager shall be included on the application. The owner of the crematory shall not abridge the authority of the crematory manager relating to compliance with the laws governing the practice of funeral services and regulations of the board. The designated crematory manager may be the manager of record of a funeral establishment colocated on the same premises.

B. Every crematory, regardless of how owned, shall have a manager who has (i) achieved certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCF); or other certification recognized by the board and (ii) received training in compliance with standards of the Occupational Health and Safety Administration (OSHA) for universal precautions and ~~blood-borne~~ bloodborne pathogens.

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as crematory manager; and
3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCF); or other certification recognized by the board. Persons receiving training toward certification to operate a retort shall be allowed to work under the supervision of an operator who holds certification for a period not to exceed six months.

E. A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

F. When a crematory application is pending and the conduct of a cremation is necessary to ensure the proper function of retort equipment, the board may authorize the crematory to conduct a test cremation prior to registration. Once the crematory equipment is deemed functional and an initial crematory inspection is completed, the board may issue the crematory a registration to operate.

G. The board may take disciplinary action against a crematory registration for a violation of § 54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or remains.

## **18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.**

A. Authorization to cremate.

1. A crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature in accordance with § 54.1-2818.1 of the Code of Virginia.
2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph of the remains signed by the person making the identification. Visual identification may be made by viewing unique identifiers or markings on the remains. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.
3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased in consultation with law enforcement, a medical examiner, or medical personnel as a prerequisite for cremation pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator, or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same chamber of the retort or cremation unit, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40° Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;
- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault, or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the ~~next of kin~~ next of kin for return to the funeral establishment or to the ~~next of kin~~ next of kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the ~~next of kin~~ next of kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains, and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

- 1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the ~~next of kin~~ next of kin or the person authorized by § 54.1-2818.1 of the Code of Virginia to make the identification has made a visual identification of the deceased or evidence of positive identification if visual identification is not feasible;
- 2. The permission form from the medical examiner;
- 3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
- 4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released, and the name of the decedent.

**18VAC65-20-440. Courtesy cards.**

A. An out-of-state person applying for a courtesy card pursuant to § 54.1-2801 B of the Code of Virginia shall hold a valid license for funeral service, funeral directing, or embalming in another state, territory, or the District of Columbia.

B. An applicant for a courtesy card shall submit:

- 1. A completed application and prescribed fee; and
- 2. Verification of a current, unrestricted licensure for funeral service license in good standing from the applicant's licensing authority, funeral directing, or embalming from the licensing authorities in the states in which the courtesy card holder is licensed to practice.

C. The holder of a Virginia courtesy card shall only engage in the practice for which he is currently licensed in another jurisdiction. The privilege to practice shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia.

**18VAC65-20-500. Disciplinary action.**

Part VI

Refusal, Suspension, Revocation, and Disciplinary Action

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

- 1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
- 2. Unfair competition.

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a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.

b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

### 3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public ~~which that~~ contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those ~~which that~~ shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 of the Code of Virginia and regulations of the board. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

10. Inappropriate sexual contact between a supervisor and a funeral service intern if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on the practice of funeral services or on intern training.

### **18VAC65-20-510. Embalming.**

#### Part VII

#### Standards for Embalming and Refrigeration

A. In accordance with the provisions of subdivision 26 of § 54.1-2806 and subsection B of § 54.1-2811.1 of the Code of Virginia, express permission by a next of kin for embalming means written authorization to embalm as a specific and separate statement on a document or contract provided by the funeral establishment. Express permission may include direct, verbal authorization to embalm, provided it is followed as soon as possible by a written document or statement signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.

B. Every funeral establishment shall record and maintain a separate, identifiable report for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;
2. The date and location of the embalming;
3. The name and signature of the embalmer and the Virginia license number of the embalmer; ~~and~~
4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor; and
5. The name of each student and the signature of the supervisor of any mortuary science student who assisted in the embalming.

### **18VAC65-20-580. Preparation room equipment.**

The preparation room or rooms shall be equipped with:

1. A ventilation system which operates and is appropriate to the size and function of the room;
2. Running hot and cold water;
3. Flush or slop sink connected with public sewer or with septic tank where no public sewer is available;
4. Metal, fiberglass, or porcelain morgue table;

5. Covered waste container;
6. Instruments and apparatus for the embalming process;
7. A means or method for the sterilization or disinfection of reusable instruments by chemical bath or soak; autoclave (steam); or ultraviolet light;
8. Disinfectants and antiseptic solutions;
9. Clean gowns or aprons, preferably impervious to water;
10. Rubber gloves for each embalmer ~~or~~ intern, or student using the room;
11. An electric aspirator or hydroaspirator equipped with a vacuum breaker;
12. An eye wash station that is readily accessible; and
13. A standard first aid kit, ~~which that~~ which that is immediately accessible, either in the preparation room or outside the door to the preparation room.

## 18VAC65-20-700. Retention of documents.

### A. The following retention schedule shall apply:

1. Price lists shall be retained for three years after the date on which they are no longer effective;
2. Itemized statements shall be retained for three years from the date on which the arrangements were made; and
3. Embalming reports shall be retained at the location of the embalming for three years after the date of the embalming.

B. The manager of record shall be responsible for retention and maintenance of all required documents.

C. Documents shall be maintained on the premises of the funeral establishment and made available for inspection.

D. In instances where the funeral establishment is sold, documents shall be transferred to the new owner, unless the existing firm is relocating to a new facility. The new owner shall retain transferred documents in accordance with the provisions of this section. When transferred documents include preneed contracts, the documents shall be retained and maintained in accordance with the provisions of the Code of Virginia and regulations of the board.

VA.R. Doc. No. R19-5988; Filed January 1, 2021, 6:05 p.m.

## Forms

**REGISTRAR'S 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.

## Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

### FORMS (18VAC65-20)

~~Funeral Service Licensee Application (rev. 3/2018)~~

~~Application for Reinstatement as a Funeral Service License (rev. 3/2018)~~

~~Verification of State Licensure Form (rev. 3/2018)~~

~~Courtesy Card Application (rev. 3/2018)~~

~~Surface Transportation and Removal Services Application (rev. 3/2018)~~

~~Crematory Registration Application (rev. 9/2018)~~

~~Continuing Education Provider Application (rev. 3/2018)~~

~~Continuing Education Summary Form (rev. 8/2016)~~

~~Continuing Education Provider Application for Approval of Additional Courses (rev. 3/2018)~~

~~Continuing Education Renewal Form (rev. 3/2018)~~

~~Continuing Education Credit for Volunteer Practice (rev. 2/2018)~~

~~Funeral Service Establishment Application (rev. 9/2018)~~

~~Branch Establishment Application (rev. 9/2018)~~

~~Application for Notification of Establishment Changes (rev. 9/2018)~~

~~Application for Change of Manager - Funeral Establishment (rev. 3/2018)~~

~~Request for Reinspection - Structural Change of Establishment (rev. 3/2018)~~

~~Waiver of Full Time Manager Application (rev. 7/2019)~~

~~Application for Reinstatement Funeral Service Establishment (rev. 3/2018)~~

~~Application for Reinstatement of Courtesy Card (rev. 3/2018)~~

[Checklist and Instructions for Funeral Service Licensee \(rev. 7/2020\)](#)

[Funeral Service License Reinstatement Application \(rev. 7/2020\)](#)

[Request for Verification of a Virginia Funeral License \(rev. 11/2019\)](#)

[Checklist and Instructions for Courtesy Card Application \(rev. 8/2020\)](#)

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[Checklist and Instructions for Surface Transportation and Removal Service Registration Application \(rev. 7/2020\)](#)

[Checklist and Instructions for Crematory Registration Application \(rev. 7/2020\)](#)

[Checklist and Instructions for Continuing Education Providers \(rev. 7/2020\)](#)

[Instructions for Completing the Continuing Education Summary Form for The Virginia Board of Funeral Directors and Embalmers \(rev. 8/2016\)](#)

[Instructions for Continuing Education Providers Adding Additional Courses \(rev. 3/2018\)](#)

[Continuing Education Provider Renewal Form \(rev. 3/2018\)](#)

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 7/2020\)](#)

[Continued Competency Activity and Assessment Form \(rev. 7/2012\)](#)

[Funeral Service New Establishment Application \(rev. 7/2020\)](#)

[Funeral Service Establishment/Branch Application \(rev. 7/2020\)](#)

[Funeral Service Establishment/Branch Change Application \(rev. 7/2020\)](#)

[Funeral Establishment or Branch Change of Manager Application \(rev. 3/2018\)](#)

[Request for Reinspection due to Structural Change to Preparation Room \(rev. 7/2020\)](#)

[Waiver of Full-Time Manager \(rev. 7/2020\)](#)

[Funeral Service Establishment Reinstatement Application \(rev. 7/2020\)](#)

[Courtesy Card Reinstatement Application \(rev. 7/2020\)](#)

[Appendix I. General Price List \(rev. 10/2019\)](#)

[Appendix II. Casket Price List, Outer Burial Container Price List \(rev. 10/2019\)](#)

[Appendix III. Itemized Statement of Funeral Goods and Services Selected \(rev. 10/2019\)](#)

VA.R. Doc. No. R21-6630; Filed January 5, 2021, 2:31 p.m.

## Final Regulation

**Title of Regulation:** 18VAC65-30. Regulations for Preneed Funeral Planning (amending 18VAC65-30-10, 18VAC65-30-50, 18VAC65-30-60, 18VAC65-30-70, 18VAC65-30-90, 18VAC65-30-110, 18VAC65-30-180, 18VAC65-30-220, 18VAC65-30-230).

**Statutory Authority:** §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

**Effective Date:** March 3, 2021.

**Agency Contact:** Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4546, FAX (804) 527-4637, or email [corie.wolf@dhp.virginia.gov](mailto:corie.wolf@dhp.virginia.gov).

### Summary:

*The amendments include (i) prohibiting a funeral service intern from engaging in preneed planning or sales, (ii) clarifying and adding disclosures of information regarding the content of a preneed contract, (iii) increasing the retention period for preneed contract documentation to three years, and (iv) specifying requirements for notification to the Board of Funeral Directors and Embalmers and each contract buyer when a funeral home closes or changes ownership.*

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

### 18VAC65-30-10. Definitions.

In addition to those defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Appointee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

~~"Capper," "steerer," or "shill" means a person who serves to entice another to purchase a product or to direct the course of action and choice of the buyer in a preneed funeral contract sale.~~

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include, ~~but are not limited to,~~ cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration," "contract price," or "funds" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties and payments required to be made to a governmental agency at the time the contract is entered into.

"Contract" means a written, preneed funeral contract, and all documents pertinent to the terms of the contract under which, for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the

contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Designee" means the individual designated to make arrangements for burial or final disposition of the remains pursuant to § 54.1-2825 of the Code of Virginia.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery that complies with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment that are sold by a cemetery operating in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia.

"Guaranteed contract price" means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of

the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and supplies that were nonguaranteed. Cash advance items are not guaranteed.

### **18VAC65-30-50. Solicitation.**

A. In accordance with provisions of § 54.1-2806 of the Code of Virginia, a licensee shall not initiate any preneed solicitation using in-person communication by the licensee, or his agents, assistants, or employees.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee [ or a licensed funeral director ]. Funeral service interns shall not engage in preneed planning or sales.

### **18VAC65-30-60. Records; general.**

A. A licensee shall keep accurate accounts, books, and records of all transactions required by this chapter.

B. Preneed contracts and reporting documents shall be retained on the premises of the establishment for ~~one year~~ three years after the death of the contract beneficiary.

C. A funeral home shall keep on file a written verification from the insurance company that the insurance or annuity contract complies with § 54.1-2820 C of the Code of Virginia.

D. All preneed records shall be available for inspection by the Department of Health Professions.

### **18VAC65-30-70. Record reporting.**

A. A contract provider shall keep a chronological or an alphabetical listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;
2. Name of contract beneficiary;
3. Date of contract;
4. How contract was funded, where the contract is funded, and where the funds are maintained;
5. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and
6. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider ~~who~~ that discontinues its business operations, whether by closure or change of ownership, shall notify the board and each existing contract buyer in writing; in accordance with the following provisions:

1. A contract provider that discontinues its business operations by closure shall:
  - a. Provide to the board a current list of preneed contracts at the time of closure; and

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b. Notify each existing contract buyer in writing prior to closure and include a statement in the notification regarding the contract buyer's right to change the contract provider at any time prior to at-need.

2. If a contract provider changes ownership and the new establishment intends to honor existing contracts, the new establishment shall provide notice of the change of ownership and intent to honor existing contracts in a publication of general circulation in the locality where the establishment is located within 90 days after the change in ownership.

3. If a contract provider changes ownership and the new establishment does not intend to honor existing contracts, notification shall be provided to each existing contract buyer in writing within 90 days after the change in ownership. The notice shall include a statement regarding the contract buyer's right to change the contract provider at any time prior to at-need.

## 18VAC65-30-90. Disclosures.

A. At the time of the inquiry, licensees shall furnish to each person inquiring about preneed arrangements a copy of the general price list and preneed disclosure questions and answers.

B. Immediately upon concluding the arrangement conference, licensees shall furnish to each person who makes a preneed arrangement a copy of the preneed contract and funding contract. Licensees shall receive a written acknowledgment from the contract buyer that the buyer has received a copy of the general price list and preneed disclosure questions and answers.

C. An itemized statement of funeral goods and services shall be given at the time of need even if the arrangements were made through a preneed contract.

## 18VAC65-30-110. Cancellation or transfer of contract.

A. Any person who makes payment under this contract may terminate the agreement at any time prior to the time for which the services or supplies are furnished.

B. If the contract buyer terminates the contract within 30 days of the execution of the contract, the contract buyer shall be refunded all consideration paid or delivered and any interest or income accrued on it.

C. If the contract buyer uses a revocable trust as the funding source and terminates the contract after 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered on nonguaranteed items;
2. At least 90% of all consideration paid for guaranteed items; and
3. All interest or income accrued on it.

D. If the contract buyer uses an irrevocable trust as the funding source, the contract buyer is not able to cancel the trust after 30 days following its execution except in accordance with §§ 64.2-729 and 64.2-730 of the Code of Virginia.

E. The contract buyer shall have the right to change the contract provider and the trustee at any time prior to the furnishing of the services or supplies contracted for under the preneed contract.

## 18VAC65-30-180. Life insurance or annuity.

If a life insurance or annuity policy is used to fund the preneed funeral contract, the contract shall be in compliance with provisions of §§ 38.2-3100.3 and 54.1-2820 ~~B~~ C of the Code of Virginia and shall contain the following information:

1. Name of the contract provider;
2. Name and funeral license number of contract seller;
3. Place of employment of contract seller;
4. Name of insurance agent and agent's insurance license number;
5. Insurance agent's employer and insurance company represented by insurance agent; and
6. Identification as to whether the insurance agent is a funeral service licensee and, if so, the funeral service license number.

## 18VAC65-30-220. Content of preneed contracts.

### Part VIII

#### Required Content of Contracts and Disclosures

The following information shall be contained in any contract for preneed funeral planning.

Date: \_\_\_\_\_

Contract: \_\_\_\_\_

#### PRENEED FUNERAL CONTRACT

for

(Name of Recipient of Services)

\_\_\_\_\_  
(Zip)\_\_\_\_\_

#### I. SUPPLIES AND SERVICES PURCHASED

If ~~the prices of~~ goods and services are guaranteed and your contract is fully paid or funded at the time of your death, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document.)

If goods and services are nonguaranteed, your family or estate may incur additional costs for goods and services as the prices for these items may increase from the date of the contract to the time of need.



Cash advance items are not guaranteed. A cash advance item is any item obtained from a third party by the funeral home on your behalf. Cash advance items may include cemetery or crematory services, pall bearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use an item, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not select if you select arrangements such as a direct cremation or immediate burial.

Guaranteed Services Purchased

I. BASIC SERVICES OF FUNERAL DIRECTOR AND STAFF \$ \_\_\_\_\_

II. FUNERAL HOME FACILITIES

- A. Facilities and Staff for visitation/viewing \$ \_\_\_\_\_
- B. Facilities and Staff for funeral ceremony \$ \_\_\_\_\_
- C. Facilities and Staff for memorial service \$ \_\_\_\_\_
- D. Equipment and Staff for graveside service \$ \_\_\_\_\_

(NOTE TO FUNERAL HOME: If you have additional charges such as facilities and staff for home/church viewing, or a charge for additional staff person or through calculation of manhours, etc., add here as extra items. If you have a charge for equipment for interment, add here.)

III. EMBALMING

- A. Normal remains \$ \_\_\_\_\_
- B. Autopsy remains \$ \_\_\_\_\_

IV. OTHER PREPARATION OF THE BODY \$ \_\_\_\_\_

(NOTE: List all items that you placed under Other Preparation on your General Price List.)

V. IMMEDIATE BURIAL \$ \_\_\_\_\_

VI. DIRECT CREMATION \$ \_\_\_\_\_

VII. TRANSFER OF REMAINS TO FUNERAL ESTABLISHMENT \$ \_\_\_\_\_

VIII. FORWARDING REMAINS TO ANOTHER FUNERAL HOME \$ \_\_\_\_\_

IX. RECEIVING REMAINS FROM ANOTHER FUNERAL HOME \$ \_\_\_\_\_

X. AUTOMOTIVE EQUIPMENT

A. Hearse \$ \_\_\_\_\_

B. Limousine \$ \_\_\_\_\_

(NOTE: List all others that you placed on General Price List.)

XI. FUNERAL MERCHANDISE

A. Casket (\*describe)  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

B. Outer Burial Container (\*describe)  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

C. List any others  
 \_\_\_\_\_ \$ \_\_\_\_\_

Supplies Purchased

- Clothing \$ \_\_\_\_\_
- Temporary marker \$ \_\_\_\_\_
- Acknowledgment cards \$ \_\_\_\_\_
- Register/attendance books \$ \_\_\_\_\_
- Memorial folders \$ \_\_\_\_\_
- Other \$ \_\_\_\_\_

SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED: \$ \_\_\_\_\_

XII. PACKAGE PRICES

(NOTE: List all package prices by name.)

SUBTOTAL COSTS OF (GUARANTEED) SUPPLIES PURCHASED: \$ \_\_\_\_\_

Nonguaranteed Goods and Services Purchased

The actual prices of goods and services below are NOT GUARANTEED. These items may include, ~~but not be limited to~~, obituary notices, death certificates, cemetery fees, flowers, sales tax, etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:

SUBTOTAL ESTIMATED COSTS OF NONGUARANTEED ITEMS: \$ \_\_\_\_\_

GRAND TOTAL FOR PRENEED ARRANGEMENTS

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1. Total cost of (guaranteed) services purchased \$ \_\_\_\_\_

2. Total cost of (guaranteed) supplies purchased \$ \_\_\_\_\_

3. Total estimated cost of nonguaranteed items \$ \_\_\_\_\_

GRAND TOTAL \$ \_\_\_\_\_

The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home) \_\_\_\_\_.

## II. GENERAL INFORMATION

In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:

A. Buyer:

B. Funeral Home Providing Services:

C. Contract seller:

Employed by: (Funeral Home)

Virginia Funeral Director or Funeral Service Licensee  
License Number:

### ~~Method of Funding~~ II. METHOD OF FUNDING

~~A. Insurance~~

~~B. A. Trust,~~

The following information will be given if a trust is used to fund this agreement:

1. Amount to be trusted:
2. Name of trustee:
3. Disposition of Interest:
4. Fees, expenses, taxes deducted from earned interest:
5. Buyer's responsibility for taxes owned on interest:

B. Insurance or annuity contract.

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

~~A. 1. Buyer:~~

~~B. 2. Insurance Company:~~

~~C. 3. Insurance Agent:~~

Employed by: (Insurance Company)

Licensed Funeral Director or Funeral Service Licensee in Virginia: \_\_\_yes \_\_\_no

Funeral Director or Funeral Service Licensee License Number (If Applicable):

Employed by Funeral Home (If Applicable):

~~D. 4.~~ The life insurance or annuity contract provides either that:

\_\_\_\_\_ The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or

\_\_\_\_\_ A benefit payable at death under such contract that will be equal or exceed the sum of all premiums paid for such contract plus thereon at the annual rate of at least 5.0%, compounded annually.

## III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers

9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

Telephone Number: (804) 367-4479

Toll Free Number for complaints: 1-800-533-1560

FAX: (804) 527-4413

Website: [www.dhp.virginia.gov](http://www.dhp.virginia.gov)

## IV. DISCLOSURES

The disclosure statements will be available for your review. The General Price List shall be furnished to you by the contract seller. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

By signing this contract, contract seller acknowledges that the General Price List and the required disclosures have been furnished to the contract buyer.

V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within 30 days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than 30 days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which that is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) \_\_\_\_\_ agrees to the statement checked below (check one):

\_\_\_\_\_ Prefinancing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page \_\_\_\_\_ for Grand Total amount). Payment of the difference will be required for the nonguaranteed estimated items if they increase in price.

\_\_\_\_\_ The prices for items under supplies and services are not guaranteed.

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to and the opportunity to read the Disclosure Statements.

(Designee of Funeral Home) \_\_\_\_\_ (Buyer)

(Funeral Home) \_\_\_\_\_ (Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home) \_\_\_\_\_, has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);

2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);

3. (Insert a description of any other circumstances which that apply);

4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship; and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

~~Addendum to Preneed Contract~~ IX. ADDENDUM TO PRENEED CONTRACT

APPOINTEE AGREEMENT

I appoint \_\_\_\_\_ of (address) \_\_\_\_\_ to assist with the preneed arrangements in my behalf. The relationship of my appointee to me is \_\_\_\_\_.

Contract Beneficiary: \_\_\_\_\_ Date: \_\_\_\_\_

I accept the request of (contract beneficiary) \_\_\_\_\_ to assist with his/her preneed arrangements.

Appointee: \_\_\_\_\_ Date: \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ 20\_\_\_\_

Notary: \_\_\_\_\_

Date Commission Expires: \_\_\_\_\_

18VAC65-30-230. Content of disclosure statements.

The following disclosure statements shall be provided as a part of any contract used for preneed funeral planning:

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

-- Is there more than one type of preneed agreement?

Yes. Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Nonguaranteed ~~means~~ contracts mean just the opposite. Nonguaranteed contracts mean costs may increase or decrease between the time of the agreement and the time of need. A preneed contract may

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have both guaranteed and nonguaranteed costs. (See the section entitled "General Funding Information" for more information on guaranteed and nonguaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

-- What are my protections?

You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

## CANCELLATION

-- Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust (revocable or irrevocable), the contract seller will refund all the money you have paid plus any interest or income you have earned.

If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30-day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust, you will not be able to cancel the trust agreement or receive a refund after 30 days following ~~the~~ execution the signing of the agreement except in accordance with ~~§ 64.2-729 §§ 64.2-729 and 64.2-730~~ of the Code of Virginia.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

## PAYMENT

-- What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

-- May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the contract seller, will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The contract seller will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the contract seller of your preneed contract. In this situation, you will have to submit information to the contract seller in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be a separate document.

## GENERAL FUNDING INFORMATION

-- If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose

~~could have insufficient~~ may not have enough value to cover all expenses at the time of need.

-- What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the contract seller, your family or estate will not have to pay any more for those items provided that you have paid the grand total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account and any items increase in price, your family or estate would be responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

-- What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

After funeral expenses are paid, there may be money left over. Because of the ongoing risk that a funeral home takes in guaranteeing prices for you, the funeral home may not be required to return this excess money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements.

Please review your preneed contract and/or funding agreement for answers to these questions.

-- What happens to my preneed contract if I change my assignment from one funeral home to another?

(Funeral home shall place answer here)

-- What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding-?

If you make such changes, it could void your contract. You should request specific information from the contract seller and the funding arrangement.

-- What will happen to my preneed contract if I fail to make agreed to premium payments to my funding source?

(Funeral home shall place answer here)

-- Do I get any money back if I surrender or cancel my funding arrangements?

(Funeral home shall place answer here)

-- What happens if the funeral home closes? Will I be able to transfer my contract to another funeral home?

You have the right to change the funeral home (contract provider) at any time prior to receiving services or supplies under the preneed contract. A funeral home is required to notify you in writing if it closes or is sold to a buyer that does not intend to honor your preneed contract.

## TRUST ACCOUNT

-- If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account, the name of the trustee, information about what happens to the interest your trust account will earn, and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified what the expenses are and whether you or the contract seller is the responsible party for paying those.

-- What happens to the interest earned by the trust?

The interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Service and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account.

Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees were deducted. Please ask your contract seller for a written list of any fees so you will have a clear understanding about them before you sign the contract.

-- If I pay my trust in premium payments, what happens if I die before the grand total of the funeral has been placed in trust?

(Funeral home shall place answer here)

## CLAIMS AGAINST THIS CONTRACT

-- Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

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No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

-- Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

## GENERAL GOODS AND SERVICES

-- If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home ~~which~~ that you select is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death.

Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However, if the substitute is more expensive than the item originally selected by you, your designee or next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

If, before your death, the funeral home goes out of business or is otherwise unable to fulfill its obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

-- May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or contract seller agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket ~~which~~ that is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (i) damage occurs, (ii) the funeral home or supplier goes out of business, (iii) the funeral home or supplier is sold, etc.? You need to be assured in writing of protection in these types of situations.

-- What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services.

They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of fees which you will be charged.

-- Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restrictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

-- I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the fees involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding is considered portable. This means that they are available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

## PRICING

-- How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your contract seller will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the contract seller will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, your family or estate will be given an itemized statement which will list all of the specific charges.

-- What is meant by guaranteed and nonguaranteed prices?

Some contract sellers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death, provided your preneed contract is fully paid for or funded at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and the interest it earns.

Nonguaranteed prices are those which might increase or decrease. The nonguaranteed prices may be written in at the time of this contract with ~~you~~ your understanding that the price is an estimate only and may increase or decrease. A settlement ~~to that effect~~ of any difference in the estimated cost and the actual cost at death may have to be made with your family or representative after your death. Examples of prices that are often not guaranteed include cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers musicians or singers, obituary notices, gratuities, and death certificates.

-- Can the contract seller and I negotiate a projected charge for the nonguaranteed items based on the rate of inflation?

It is entirely up to the contract seller to inform you of the funeral home policy in that regard.

## CASKETS AND CONTAINERS

-- Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

-- Is a casket required?

A casket is not required for direct cremation. If you want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

-- Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

## EMBALMING

-- Is embalming always required?

~~Except in certain special cases, embalming~~ Embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements such as viewing or visitation with an open casket. You do not have to pay for embalming you did not approve if you select arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an embalming, your designee will be notified of the reasons in writing.

## RECORDS

-- What should I do with my preneed contract and documents?

A preneed contract is a legal document. You should keep a copy of your preneed contract and related documentation as you would any similar legal document such as in a safe place or with the person designated to make arrangements at the time of your death.

-- Will the funeral home keep a copy of the preneed contract?

The funeral home is required to maintain a copy of the preneed contract on file prior to and after need. Preneed contracts and related documents are required to be kept by the funeral home for three years after your death.

## ASSISTANCE

-- This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and contract seller either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

-- Where can I complain if I have a problem concerning my preneed contract, the contract seller, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers  
9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

Telephone Number: (804) 367-4479

Toll Free Number for complaints: 1-800-533-1560

Fax: (804) 527-4413

Website: [www.dhp.virginia.gov](http://www.dhp.virginia.gov)

VA.R. Doc. No. R19-5826; Filed January 1, 2021, 6:05 p.m.

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# Regulations

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## Emergency Regulation

Titles of Regulations: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-130, 18VAC65-20-140, 18VAC65-20-151, 18VAC65-20-154, 18VAC65-20-235, 18VAC65-20-350, 18VAC65-20-500, 18VAC65-20-630; adding 18VAC65-20-231, 18VAC65-20-232).

18VAC65-30. Regulations for Preneed Funeral Planning (amending 18VAC65-30-10, 18VAC65-30-50, 18VAC65-30-220).

18VAC65-40. Regulations for the Funeral Service Internship Program (amending 18VAC65-40-10, 18VAC65-40-40, 18VAC65-40-90, 18VAC65-40-110, 18VAC65-40-130, 18VAC65-40-180, 18VAC65-40-220, 18VAC65-40-250, 18VAC65-40-280, 18VAC65-40-320, 18VAC65-40-340, 18VAC65-40-640; adding 18VAC65-40-185).

Statutory Authority: § 54.-2400 of the Code of Virginia.

Effective Dates: January 5, 2021, through July 4, 2022.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email [fanbd@dhp.virginia.gov](mailto:fanbd@dhp.virginia.gov).

### Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Chapter 943 of the 2020 Acts of Assembly, the amendments establish education, examination, and experience for licensure as a funeral director or an embalmer, including that (i) applicants will be required to obtain an associate's degree in an accredited mortuary science program or complete a program approved by the Board of Funeral Directors and Embalmers specific to the licensure category sought (that is, funeral director or embalmer), and (ii) all funeral interns will be required to complete 2,000 hours of supervised experience in the area of funeral practice for which they are seeking licensure. Amendments also insert the three types of licenses and scopes of practice throughout board regulations.*

### **18VAC65-20-130. Renewal of license; registration.**

A. A person, establishment, crematory, courtesy card holder or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18VAC65-20-120, submit the renewal form and applicable fee.

1. In order to renew an active funeral service, funeral director, or embalmer license, a licensee shall be required to

comply with continuing competency requirements set forth in 18VAC65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity ~~which that~~ fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18VAC65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

### **18VAC65-20-140. Reinstatement of expired license or registration.**

A. The board may consider reinstatement of an expired license or registration that has not been renewed within one year of expiration for up to three years following expiration. An application request for reinstatement shall be submitted to the board and shall include payment of the reinstatement fee prescribed in 18VAC65-20-70.

B. If the Virginia license of a funeral service ~~provider~~ licensee, funeral director ~~and~~, or embalmer is lapsed three years or less and the applicant is seeking reinstatement, ~~he the~~ applicant shall provide evidence of having completing the number of continuing competency hours required for the period in which the license has been lapsed.

C. When a license is not reinstated within three years of its expiration date, an applicant shall reapply for licensure and pass the state examination.

### **18VAC65-20-151. Continued competency requirements for renewal of an active license.**

A. Funeral service licensees, funeral directors, or ~~funeral~~ embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving



health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

#### **18VAC65-20-154. Inactive license.**

A. A funeral service licensee, funeral director, or embalmer who holds a current, unrestricted license in Virginia shall, upon a request for inactive status on the renewal application and submission of the required renewal fee of \$115, be issued an inactive license. The fee for late renewal up to one year following expiration of an inactive license shall be \$40.

1. An inactive licensee shall not be entitled to perform any act requiring a license to practice funeral service, funeral directing, or embalming in Virginia.

2. The holder of an inactive license shall not be required to meet continuing education requirements, except as may be required for reactivation in subsection B of this section.

B. A funeral service licensee, funeral director, or embalmer who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the year in which the license is being reactivated; and

2. Providing proof of completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed three years.

#### **18VAC65-20-231. Requirements for a funeral director license by examination.**

A. To qualify for licensure as a funeral director, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;

2. Have completed a funeral service internship prescribed by the board in regulation;

3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an associate's degree or its equivalent, which consists of at least 60 credit hours of coursework, from a funeral directing program approved by the board;

4. Have successfully completed coursework in the area of pathology as approved by the board;

5. Have passed the National Board Examination in Arts or State Board Examination in Arts of the International Conference of Funeral Service Examining Boards; and

6. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

#### **18VAC65-20-232. Requirements for an embalmer license by examination.**

A. To qualify for licensure as an embalmer, a person shall:

1. Be at least 18 years of age and hold a high school diploma or its equivalent;

2. Have completed a funeral service internship prescribed by the board in regulation;

3. Have graduated from a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated or have completed an embalming program approved by the board;

4. Have passed the National Board Examination in Sciences or State Board Examination in Sciences of the International Conference of Funeral Service Examining Boards; and

5. Have passed the Virginia State Board Examination on the laws, rules, and regulations for funeral practice.

B. Applicants shall submit school transcripts and National Board Examination or State Board Examination scores as part of an application package, including the required fee and any

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additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may license an individual convicted of a felony if such individual has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The board may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

## **18VAC65-20-235. Approval of educational programs.**

All applicants for ~~funeral service~~ licensure as a funeral service licensee are required to have graduated from a funeral service program offered by a school of mortuary science or funeral service accredited by the American Board of Funeral Service Education, Incorporated.

## **18VAC65-20-350. Requirements for licensure by reciprocity or endorsement.**

A. Licenses for the practice of funeral service, funeral directing, embalming, or ~~its~~ an equivalent license issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license ~~or licenses~~ may be granted a license to practice funeral service, funeral directing, or embalming within the Commonwealth.

Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service, funeral directing, embalming, or ~~its~~ an equivalent license in another state, territory, or the District of Columbia and possesses credentials ~~which that~~ are substantially similar to or more stringent than required by the Commonwealth for initial licensure at the time the applicant was initially licensed.

B. An applicant for licensure by reciprocity or endorsement shall pass the Virginia State Board Examination.

## **18VAC65-20-500. Disciplinary action.**

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
2. Unfair competition.
  - a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.
  - b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.

### 3. False advertising.

a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling and storage of dead human bodies, consistent with § 54.1-2811.1 of the Code of Virginia and regulations of the board. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services, funeral directing, or embalming in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

10. Conducting activities or performing services that are outside the scope of a licensee's practice or for which the licensee is not trained and individually competent.

## **18VAC65-20-630. Disclosures.**

Funeral providers licensees shall make all required disclosures and provide accurate information from price lists pursuant to the rules of the Federal Trade Commission. Price lists shall comply with requirements of the FTC and shall contain the information included in:

APPENDIX I - General Price List;

APPENDIX II - Casket Price List, Outer Burial Container Price List; and

APPENDIX III - Itemized Statement of Funeral Goods and Services Selected.

## **18VAC65-30-10. Definitions.**

In addition to those defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Appointee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

"Capper," "steerer," or "shill" means a person who serves to entice another to purchase a product or to direct the course of action and choice of the buyer in a preneed funeral contract sale.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include, but are not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration," "contract price," or "funds" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties and payments required to be made to a governmental agency at the time the contract is entered into.

"Contract" means a written, preneed funeral contract, and all documents pertinent to the terms of the contract under which, for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee or funeral director who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Designee" means the individual designated to make arrangements for burial or final disposition of the remains pursuant to § 54.1-2825 of the Code of Virginia.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery that complies with Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment that are sold by a cemetery operating in accordance with Chapter 23.1 of Title 54.1 of the Code of Virginia.

"Guaranteed contract price" means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and

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supplies that were nonguaranteed. Cash advance items are not guaranteed.

## 18VAC65-30-50. Solicitation.

A. In accordance with provisions of § 54.1-2806 of the Code of Virginia, a licensee shall not initiate any preneed solicitation using in-person communication by the licensee, his agents, assistants, or employees.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee or a funeral director.

## 18VAC65-30-220. Content of preneed contracts.

The following information shall be contained in any contract for preneed funeral planning.

Date: \_\_\_\_\_

Contract: \_\_\_\_\_

### PRENEED FUNERAL CONTRACT

for

(Name of Recipient of Services)

\_\_\_\_\_

(Zip) \_\_\_\_\_

### I. SUPPLIES AND SERVICES PURCHASED

If the prices of goods and services are guaranteed, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document.)

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use an item, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not select if you select arrangements such as a direct cremation or immediate burial.

#### Guaranteed Services Purchased

I. BASIC SERVICES OF FUNERAL DIRECTOR AND STAFF \$ \_\_\_\_\_

#### II. FUNERAL HOME FACILITIES

A. Facilities and Staff for visitation/viewing \$ \_\_\_\_\_

B. Facilities and Staff for funeral ceremony \$ \_\_\_\_\_

C. Facilities and Staff for memorial service \$ \_\_\_\_\_

D. Equipment and Staff for graveside service \$ \_\_\_\_\_

(NOTE TO FUNERAL HOME: If you have additional charges such as facilities and staff for home/church viewing, or a charge for additional staff person or through calculation of manhours, etc., add here as extra items. If you have a charge for equipment for interment, add here.)

### III. EMBALMING

A. Normal remains \$ \_\_\_\_\_

B. Autopsy remains \$ \_\_\_\_\_

### IV. OTHER PREPARATION OF THE BODY \$ \_\_\_\_\_

(NOTE: List all items that you placed under Other Preparation on your General Price List.)

V. IMMEDIATE BURIAL \$ \_\_\_\_\_

VI. DIRECT CREMATION \$ \_\_\_\_\_

VII. TRANSFER OF REMAINS TO FUNERAL ESTABLISHMENT \$ \_\_\_\_\_

VIII. FORWARDING REMAINS TO ANOTHER FUNERAL HOME \$ \_\_\_\_\_

IX. RECEIVING REMAINS FROM ANOTHER FUNERAL HOME \$ \_\_\_\_\_

### X. AUTOMOTIVE EQUIPMENT

A. Hearse \$ \_\_\_\_\_

B. Limousine \$ \_\_\_\_\_

(NOTE: List all others that you placed on General Price List.)

### XI. FUNERAL MERCHANDISE

A. Casket (\*describe)

\_\_\_\_\_ \$ \_\_\_\_\_

B. Outer Burial Container (\*describe)

\_\_\_\_\_ \$ \_\_\_\_\_

C. List any others

\_\_\_\_\_ \$ \_\_\_\_\_

#### Supplies Purchased

Clothing \$ \_\_\_\_\_

Temporary marker \$ \_\_\_\_\_

Acknowledgment cards \$ \_\_\_\_\_

Register/attendance books \$ \_\_\_\_\_

Memorial folders \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

SUBTOTAL COSTS OF (GUARANTEED) \$ \_\_\_\_\_

SUPPLIES PURCHASED:

**XII. PACKAGE PRICES**

(NOTE: List all package prices by name.)

SUBTOTAL COSTS OF (GUARANTEED) \$ \_\_\_\_\_

SUPPLIES PURCHASED:

Nonguaranteed Goods and Services Purchased

The actual prices of goods and services below are NOT GUARANTEED. These items may include, but not be limited to, obituary notices, death certificates, cemetery fees, flowers, sales tax, etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:

SUBTOTAL ESTIMATED COSTS OF \$ \_\_\_\_\_

NONGUARANTEED ITEMS:

**GRAND TOTAL FOR PRENEED ARRANGEMENTS**

1. Total cost of (guaranteed) services purchased \$ \_\_\_\_\_

2. Total cost of (guaranteed) supplies purchased \$ \_\_\_\_\_

3. Total estimated cost of nonguaranteed items \$ \_\_\_\_\_

**GRAND TOTAL** \$ \_\_\_\_\_

The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home) \_\_\_\_\_.

**II. GENERAL INFORMATION**

In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:

A. Buyer:

B. Funeral Home Providing Services:

C. Contract seller:

Employed by: (Funeral Home)

Virginia Funeral Director License Number:

**Method of Funding**

A. Insurance

B. Trust

1. Amount to be trusted:

2. Name of trustee:

3. Disposition of Interest:

4. Fees, expenses, taxes deducted from earned interest:

5. Buyer's responsibility for taxes owned on interest:

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

A. Buyer:

B. Insurance Company:

C. Insurance Agent:

Employed by: (Insurance Company)

Licensed Funeral Director or Funeral Service Licensee in Virginia: \_\_\_yes \_\_\_no

Funeral Director or Funeral Service License Number (If Applicable):

Employed by Funeral Home (If Applicable):

D. The life insurance or annuity contract provides either that:

\_\_\_\_\_ The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or

\_\_\_\_\_ A benefit payable at death under such contract that will be equal or exceed the sum of all premiums paid for such contract plus thereon at the annual rate of at least 5.0%, compounded annually.

**III. CONSUMER INFORMATION**

The Board of Funeral Directors and Embalmers is authorized by Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers

9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

Telephone Number (804) 367-4479

Toll Free Number 1-800-533-1560

FAX: (804) 527-4413

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## IV. DISCLOSURES

The disclosure statements will be available for your review. The General Price List shall be furnished to you by the contract seller. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

## V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within 30 days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than 30 days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

## VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) \_\_\_\_\_ agrees to the statement checked below (check one):

\_\_\_\_\_ Prefinancing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page \_\_\_\_\_ for Grand Total amount). Payment of the difference will be required for the nonguaranteed estimated items if they increase in price.

\_\_\_\_\_ The prices for items under supplies and services are not guaranteed.

## VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance

with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to and the opportunity to read the Disclosure Statements.

(Designee of Funeral Home) \_\_\_\_\_ (Buyer)

(Funeral Home) \_\_\_\_\_ (Contract Date)

## VIII. PENALTIES OR RESTRICTIONS

The (funeral home) \_\_\_\_\_, has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);
2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);
3. (Insert a description of any other circumstances which apply);
4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):
  - A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship; and
  - B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

## Addendum to Preneed Contract

### APPOINTEE AGREEMENT

I appoint \_\_\_\_\_ of (address) \_\_\_\_\_ to assist with the preneed arrangements in my behalf. The relationship of my appointee to me is \_\_\_\_\_.

Contract Beneficiary: \_\_\_\_\_ Date: \_\_\_\_\_

I accept the request of (contract beneficiary) \_\_\_\_\_ to assist with his/her preneed arrangements.

Appointee: \_\_\_\_\_ Date: \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary: \_\_\_\_\_

Date Commission Expires: \_\_\_\_\_

### 18VAC65-40-10. Definitions.

In addition to words and terms defined in § 54.1-2800 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that a person licensed for the practice of funeral service professional, funeral directing, or embalming is present and on the premises of the facility.

"Supervisor" means a licensed employee at the training site who has been approved by the board to provide supervision for the funeral intern.

"Training site" means the licensed funeral establishment, facility, or institution that has agreed to serve as a location for a funeral service internship and has been approved by the board.

**18VAC65-40-40. Fees.**

A. The following fees shall be paid as applicable for registration:

1. Funeral service, <u>funeral directing, or embalming</u> intern registration	\$150
2. Funeral service, <u>funeral directing, or embalming</u> intern renewal	\$125
3. Late fee for renewal up to one year after expiration	\$45
4. Duplicate copy of intern registration	\$25
5. Handling fee for returned check or dishonored credit card or debit card	\$50
6. Registration of supervisor	\$35
7. Change of supervisor	\$35
8. Reinstatement fee	\$195

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refundable once submitted.

**18VAC65-40-90. Renewal of registration.**

A. The funeral service, funeral directing, or embalming intern registration shall expire on March 31 of each calendar year and may be renewed by submission of the renewal notice and prescribed fee.

B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid registration. No credit will be allowed for an internship period served under an expired registration.

C. The funeral service, funeral directing, or embalming intern is responsible for notifying the board within 14 days of any changes in name, address, employment, or supervisor. Any notices shall be validly given when mailed to the address on record with the board.

**18VAC65-40-110. Reinstatement of expired registration.**

A. A funeral service, funeral directing, or embalming intern whose registration has expired may be reinstated within one year following expiration by payment of the current renewal fee and the late renewal fee.

B. A funeral service, funeral directing, or embalming intern whose registration has been expired for more than one year shall apply for reinstatement by submission of an application and payment of a reinstatement fee. The board may consider reinstatement of an expired registration for up to three years following expiration.

C. When a registration is not reinstated within three years of its expiration date, a new application for registration shall be filed and a new internship begun.

**18VAC65-40-130. Funeral service, funeral directing, or embalming internship.**

A. ~~The An~~ An internship for funeral service, funeral directing, or embalming shall consist of at least ~~3,000~~ 2,000 hours of training to be completed within no less than 12 months and no more than 48 months. For good cause shown, the board may grant an extension of time for completion of an internship.

B. The ~~funeral service~~ intern shall be assigned a work schedule of not less than 20 hours nor more than 60 hours per week in order to receive credit for such training. For good cause shown, the board may waive the limitation on an intern's work schedule.

C. A funeral service intern shall receive training in all areas of funeral service.

D. A funeral directing intern shall receive training in all areas of funeral directing, including assisting in at least 25 funerals, 25 arrangement conferences, as well as visitations and financing of funeral services.

E. An embalming intern shall receive training in all aspects of embalming practice, including assisting in at least 25 embalmings, as well as treatment, restorative art, safety and sanitation, and organ, tissue, or anatomical donation.

**18VAC65-40-180. Intern application package for funeral service licensure.**

A. Any person who meets the qualifications of § 54.1-2817 of the Code of Virginia may seek registration with the board as a funeral service intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

**18VAC65-40-185. Intern application for funeral directing or embalming licensure.**

A. An applicant who attests to holding a high school diploma or its equivalent may seek registration with the board as a funeral directing or an embalming intern by submission of an application package, which shall include documentation of the qualifications and signatures of any supervising licensees.

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# Regulations

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B. Applicants shall submit school transcripts as part of an application package, including the required fee and any additional documentation as may be required to determine eligibility.

C. The board, in its discretion, may approve an application to be a funeral directing or an embalming intern for an individual convicted of a felony, if the applicant has successfully fulfilled all conditions of sentencing, been pardoned, or has had civil rights restored. The board shall not, however, approve an application to be an intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126 of the Code of Virginia. The board, in its discretion, may refuse to approve an application to be a funeral directing or an embalming intern for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

## **18VAC65-40-220. Qualifications of training site.**

A. The board shall approve only an establishment or two combined establishments to serve as the training site or sites that:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. ~~Have~~ For a funeral service internship, have 50 or more funerals and 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals or embalmings, the funeral service intern may seek approval for an additional training site; or
4. For a funeral directing internship, have 50 or more funerals over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of funerals, the funeral directing intern may seek approval for an additional training site; or
5. For an embalming internship, have 50 or more bodies for embalming over a 12-month period for each person to be trained. This total must be maintained throughout the period of training. If the establishment does not meet the required number of embalmings, the embalming intern may seek approval for an additional training site.

B. The board may grant approval for a ~~resident trainee~~ funeral service or embalming intern to receive all or a portion of the embalming training at a facility of state or federal government or an accredited educational institution.

## **18VAC65-40-250. Requirements for supervision.**

A. Training shall be conducted under the direct supervision of a licensee or licensees approved by the board. Credit shall only be allowed for training under direct supervision.

B. The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who have a full and unrestricted Virginia funeral license, have at least two consecutive years in practice and are employed full time in or under contract with the establishment, facility, or institution where training occurs.

C. A supervisor licensed as an embalmer or a funeral director shall provide supervision only in the areas of funeral practice for which he is licensed.

D. Failure to register as a supervisor may subject the licensee to disciplinary action by the board.

E. If a supervisor is unable or unwilling to continue providing supervision, the ~~funeral service~~ intern shall obtain a new supervisor. Credit for training shall resume when a new supervisor is approved by the board and the intern has paid the prescribed fee for the change of supervisor.

F. No more than a combined total of two funeral service, funeral directing, or embalming interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing, or embalming. Each supervisor for a registered funeral directing intern or a registered embalming intern must be actively employed by or under contract with a funeral establishment.

## **18VAC65-40-280. Supervisor application package.**

A. A licensee seeking approval by the board as a supervisor shall submit a completed application and any additional documentation as may be required to determine eligibility.

B. The application for supervision of a funeral service, funeral directing, or embalming intern shall be signed by the establishment manager and by the persons who will be providing supervision for embalming ~~and, for funeral directing, or for the funeral services.~~

## **18VAC65-40-320. Reports to the board.**

A. The intern, the supervisor or supervisors, and the establishment shall submit a written report to the board at the end of every 1,000 hours of training. The report shall:

1. Specify the period of time in which the 1,000 hours has been completed and verify that the intern has actually served in the required capacity during the preceding period; and
2. Be received in the board office no later than 14 days following the end of the completion of 1,000 hours. ~~Late reports may result in additional time being added to the internship.~~

B. If the internship is terminated or interrupted prior to completion of 1,000 hours or if the intern is changing supervisors or training sites, the intern and the supervisor shall



submit a partial report to the board with a written explanation of the cause of program termination or interruption or of the change in training or supervision.

1. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given for the number of hours of training completed.

2. Partial reports shall be received in the board office no later than 14 days after the interruption or termination of the internship or after the change in supervisors or training sites. ~~Credit may be deducted for late reports.~~

C. An intern shall not receive credit for training hours on a new 1,000-hour report until the previous 1,000-hour report has been approved by the board.

D. Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the board may deny an additional internship. A funeral directing or an embalming intern may continue to practice for up to 90 days from the completion of internship hours or until the intern has taken and received the results of all examinations required by the board, whichever occurs first. However, the board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the board determines that enforcement of the limitation will create an unreasonable hardship.

Part III

Internship: ~~Funeral~~ Supervisors' Responsibilities

**18VAC65-40-340. Supervisors' responsibilities.**

A. The supervisor shall provide the intern with all applicable laws and regulations or sections of regulations relating to the funeral industry.

B. The supervisor shall provide the intern with copies of and instruction in the use of all forms and price lists employed by the funeral establishment.

C. The supervisor shall provide the funeral service or funeral directing intern with instruction in all aspects of funeral services and shall allow the intern under direct supervision to conduct all necessary arrangements for a minimum of 25 funerals.

D. The embalming supervisor shall provide instruction on all necessary precautions, embalming functions, and reporting forms and shall allow the funeral service or embalming intern under direct supervision to perform a minimum of 25 embalmings.

E. The supervisor shall provide the funeral service or funeral directing intern with instruction in making preneed funeral

arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures.

F. The supervisor shall provide the funeral service or funeral directing intern instruction on cremation and on the laws and regulations pertaining to cremation.

G. If a training site does not offer preneed funeral planning or cremation services, the supervisor shall arrange for such training at another licensed funeral establishment that does.

**18VAC65-40-640. Disciplinary action.**

The board may refuse to issue or renew a license, registration, or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license, registration, or approval, or reprimand any person, or place his license or registration on probation with such terms and conditions and for such time as it may designate or impose a monetary penalty for failure to comply with the laws and regulations of the Board of Funeral Directors and Embalmers.

VA.R. Doc. No. R21-6539; Filed January 4, 2021, 6:18 p.m.

**Forms**

REGISTRAR'S 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.

Title of Regulation: **18VAC65-40. Regulations for the Funeral Service Internship Program.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC65-40)

~~Registration for Funeral Service Internship Program Checklist and Instructions (rev. 4/08).~~

~~Funeral Service Intern Program Application (rev. 4/08).~~

~~Checklist and Instructions for Funeral Service Provider (rev. 4/08).~~

~~Funeral Supervisor Registration Application (rev. 4/08).~~

~~First 1000 Hour Internship Report (rev. 3/08).~~

~~Second 1000 Hour Internship Report (rev. 3/08).~~

~~Third 1000 Hour Internship Report (rev. 3/08).~~

~~Funeral Service Internship Program Change of Supervisor Application (rev. 3/08).~~

~~Application for Reinstatement as a Funeral Service Intern (rev. 4/08).~~

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# Regulations

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Application for Funeral Service Internship Program, online form available at <https://www/license/dhp.virginia.gov/apply/>

[Funeral Supervisor Registration Application \(rev. 7/2020\)](#)

[First 1000 Hour Funeral Internship Report \(rev. 7/2020\)](#)

[Second 1000 Hour Funeral Internship Report \(rev. 7/2020\)](#)

[Third 1000 Hour Funeral Internship Report \(rev. 7/2020\)](#)

[Funeral Internship – Report of Final Completion \(rev. 7/2020\)](#)

[Funeral Service Intern Reinstatement Application \(rev. 7/2020\)](#)

VA.R. Doc. No. R21-6631; Filed January 5, 2021, 2:31 p.m.

## BOARD OF HEALTH PROFESSIONS

### Forms

**REGISTRAR'S 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.

Title of Regulation: **18VAC75-20. Regulations Governing Practitioner Self-Referral.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC75-20)

~~Application for an Advisory Opinion – Virginia Self-Referral Act/With Certification (rev. 7/08).~~

~~Application for an Exception to the Prohibitions of the Virginia Practitioner Self-Referral Act/With Certification (rev. 7/08).~~

~~Practitioner Listing (rev. 7/08).~~

[Application for an Advisory Opinion - Virginia Self-Referral Act \(rev. 7/2013\)](#)

[Application for an Exception to the Prohibitions of the Virginia Practitioner Self-Referral Act \(rev. 7/2013\)](#)

VA.R. Doc. No. R21-6632; Filed January 5, 2021, 2:31 p.m.

## BOARD OF NURSING

### Final Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-30, 18VAC90-19-210).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Effective Date: March 3, 2021.

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](mailto:jay.douglas@dhp.virginia.gov).

Summary:

*The amendments clarify that the Board of Nursing will accept for registration evidence of a clinical nurse specialist (CNS) certification that has been retired or is the core certification, provided the certification has been maintained and is current. Similarly, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration. The amendments also amend the requirements for renewal of a lapsed registration or reinstatement of a registration to be similar to the requirements for reinstatement of a registered nurse license. The action is in response to a petition for rulemaking.*

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.

### 18VAC90-19-30. Fees.

A. Fees required by the board are:

1. Application for licensure by examination - RN \$190
2. Application for licensure by endorsement - RN \$190
3. Application for licensure by examination - LPN \$170
4. Application for licensure by endorsement - LPN \$170
5. Reapplication for licensure by examination \$50
6. Biennial licensure renewal - RN \$140
7. Biennial inactive licensure renewal - RN \$70
8. Biennial licensure renewal - LPN \$120
9. Biennial inactive licensure renewal - LPN \$60
10. Late renewal - RN \$50
11. Late renewal - RN inactive \$25
12. Late renewal - LPN \$40
13. Late renewal - LPN inactive \$20
14. Reinstatement of lapsed license - RN \$225
15. Reinstatement of lapsed license - LPN \$200

16. Reinstatement of suspended or revoked license <u>or registration</u>	\$300
17. Duplicate license	\$15
18. Replacement wall certificate	\$25
19. Verification of license	\$35
20. Transcript of all or part of applicant or licensee records	\$35
21. Handling fee for returned check or dishonored credit card or debit card	\$50
22. Application for CNS registration	\$130
23. Biennial renewal of CNS registration	\$80
24. Reinstatement of lapsed CNS registration	\$125
25. Verification of CNS registration to another jurisdiction	\$35
26. Late renewal of CNS registration	\$35

B. For renewal of licensure or registration from July 1, 2017, through June 30, 2019, the following fees shall be in effect:

1. Biennial licensure renewal - RN	\$105
2. Biennial inactive licensure renewal - RN	\$52
3. Biennial licensure renewal - LPN	\$90
4. Biennial inactive licensure renewal - LPN	\$45
5. Biennial renewal of CNS registration	\$60

**18VAC90-19-210. Clinical nurse specialist registration.**

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of current national clinical nurse specialist certification, including core certification or a certification that has been retired, as required by § 54.1-3018.1 of the Code of Virginia or have an exception available from March 1, 1990, to July 1, 1990; and
3. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed. If registered as a clinical nurse specialist with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in an even-numbered year shall renew his license by the last day of the birth month in even-numbered years and a licensee born in an odd-

numbered year shall renew his license by the last day of the birth month in odd-numbered years.

2. The clinical nurse specialist shall complete the renewal form and submit it with the required fee. An attestation of current national certification as a clinical nurse specialist, including core certification or a certification that has been retired, is required unless registered in accordance with an exception.

3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed or the multistate licensure privilege is lapsed or registration as a clinical nurse specialist is not renewed and may be reinstated within one renewal period upon:

- a. Reinstatement of RN license or multistate licensure privilege, if lapsed;
- b. Payment of ~~reinstatement~~ and current renewal fees and late renewal fees; and
- c. Submission of evidence of continued national certification as a clinical nurse specialist, including core certification or a certification that has been retired, unless registered in accordance with an exception.

**C. Reinstatement of registration.**

1. A clinical nurse specialist whose registration has lapsed for more than one renewal period may be reinstated by submission of:

- a. A reinstatement application and reinstatement fee;
- b. Evidence of a current RN license or multistate privilege; and
- c. Evidence of current national certification as a clinical nurse specialist, including core certification or a certification that has been retired, unless registered in accordance with an exception.

2. A clinical nurse specialist whose registration has been suspended or revoked by the board may apply for reinstatement by:

- a. Filing a reinstatement application;
- b. Fulfilling requirements specified in subdivision 1 c of this subsection; and
- c. Paying the fee for reinstatement after suspension or revocation.

The board may request additional evidence that the clinical nurse specialist is prepared to resume practice in a competent manner. A clinical nurse specialist whose registration has been revoked may not apply for reinstatement sooner than three years from entry of the order of revocation.

VA.R. Doc. No. R19-28; Filed January 1, 2021, 6:06 p.m.

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# Regulations

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## BOARD OF LONG-TERM CARE ADMINISTRATORS

### Forms

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**Title of Regulation: 18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

#### FORMS (18VAC95-20)

Nursing Home Administrator Application - form available online only at <https://www.license.dhp.virginia.gov/apply/>

Nursing Home Administrator-in-Training Application, online form available at <https://www.license.dhp.virginia.gov/apply/>

~~Nursing Home Administrator in Training Notice of Change of Status or Discontinuance (rev. 3/2019)~~

[Nursing Home Administrator-in-Training Notice of Change of Status or Discontinuance \(rev. 7/2020\)](#)

Nursing Home Administrator Preceptor Application, online form available at <https://www.license.dhp.virginia.gov/apply/>

~~Checklist and Instructions for Nursing Home Administrator Reinstatement Application (rev. 3/2019)~~

~~Monthly Report of Nursing Home Administrator in Training (rev. 3/2019)~~

~~Nursing Home Administrator in Training Documentation of Completion Form (rev. 3/2019)~~

~~Proposed AIT Program Training Plan Domains of Practice (rev. 3/2019)~~

[Checklist and Instructions for Nursing Home Administrator Reinstatement Application \(rev. 7/2020\)](#)

[Monthly Report of Nursing Home Administrator-in-Training \(rev. 7/2020\)](#)

[Nursing Home Administrator-in-Training Documentation of Completion Form \(rev. 7/2020\)](#)

[Proposed AIT Program Training Plan Domains of Practice \(rev. 7/2020\)](#)

[Continued Competency Activity and Assessment Form for Nursing Home Administrators \(rev. 10/2014\)](#)

~~Continued Education (CE) Credit Form for Voluntary Practice (eff. 2/2018)~~

[Continued Education \(CE\) Credit Form for Volunteer Practice \(rev. 7/2020\)](#)

V.A.R. Doc. No. R21-6618; Filed January 5, 2021, 2:32 p.m.

### Forms

**REGISTRAR'S 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.

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

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

#### FORMS (18VAC95-30)

Assisted Living Facility Administrator Application for Licensure - form available online only at [https://www.dhp.virginia.gov/nha/nha\\_forms.htm#alfa](https://www.dhp.virginia.gov/nha/nha_forms.htm#alfa)

~~Assisted Living Facility Administrators Education and Experience Matrix (rev. 3/2019)~~

[Assisted Living Facility Administrators Education and Experience Matrix \(rev. 7/2020\)](#)

Assisted Living Facility Administrator Administrator-in-Training Application - form available online only at [https://www.dhp.virginia.gov/nha/nha\\_forms.htm#alfa](https://www.dhp.virginia.gov/nha/nha_forms.htm#alfa) <https://www.license.dhp.virginia.gov/apply/>

~~Monthly Report of Assisted Living Facility Administrator in Training (rev. 3/2019)~~

~~Assisted Living Facility Administrator in Training Documentation of Completion Form (rev. 3/2019)~~

~~Assisted Living Facility Administrator in Training Notice of Change of Status or Discontinuance (rev. 3/2019)~~

[Monthly Report of Assisted Living Facility Administrator-in-Training \(rev. 7/2020\)](#)

[Assisted Living Facility Administrator-in-Training Documentation of Completion Form \(rev. 7/2020\)](#)

[Assisted Living Facility Administrator-in-Training Notice of Change of Status or Discontinuance \(rev. 7/2020\)](#)

Assisted Living Facility Administrator Preceptor Application - form only available online at [https://www.dhp.virginia.gov/nha/nha\\_forms.htm#alfa](https://www.dhp.virginia.gov/nha/nha_forms.htm#alfa)

~~Proposed AIT Training Plan Domains of Practice (rev. 3/2019)~~

~~Checklist and Instructions for Assisted Living Facility Administrator Reinstatement Application (rev. 3/2019)~~

~~Checklist and Instructions for Assisted Living Facility Administrator Preceptor Reinstatement Application (rev. 3/2019)~~

~~Checklist and Instructions for Acting Assisted Living Facility Administrator in Training (rev. 3/2019)~~

[Proposed AIT Program Training Plan Domains of Practice \(rev. 7/2020\)](#)

[Checklist and Instructions for Assisted Living Facility Administrator Reinstatement Application \(rev. 7/2020\)](#)

[Checklist and Instructions for Assisted Living Facility Administrator Preceptor Reinstatement Application \(rev. 7/2020\)](#)

[Checklist and Instructions for Acting Assisted Living Facility Administrator-in-Training \(rev. 7/2020\)](#)

[Continuing Competency Activity and Assessment Form for Assisted Living Facility Administrators \(rev. 9/2010\)](#)

~~Continuing Education (CE) Credit Form for Volunteer Practice (eff. 2/2018)~~

~~Name/Address Change Form (rev. 3/2019)~~

~~Request for Verification of Virginia NHA or ALFA License (eff. 3/2019)~~

[Continuing Education \(CE\) Credit Form for Volunteer Practice \(rev. 7/2020\)](#)

[Name/Address Change Form \(rev. 1/2021\)](#)

[Request for Verification of Virginia Long-Term Care Administrators License \(rev. 11/2019\)](#)

VA.R. Doc. No. R21-6633; Filed January 5, 2021, 2:32 p.m.

**Emergency Regulation**

**Titles of Regulations: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-111).**

**18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-10, 18VAC110-21-20, 18VAC110-21-40, 18VAC110-21-140 through 18VAC110-21-180; adding 18VAC110-21-135, 18VAC110-21-141).**

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

Effective Dates: January 3, 2021, through July 2, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*The amendments conform regulation to Chapters 102 and 237 of the 2020 Acts of Assembly, including (i) establishing the requirements for registration as a pharmacy technician trainee for a person enrolled in a training program and engaging in tasks that may be delegated to a technician; (ii) specifying the certification examinations that are acceptable for registration as a pharmacy technician; and (iii) setting out the requirement for accreditation of training programs that will become effective on July 1, 2022.*

**18VAC110-20-111. Pharmacy technicians.**

A. Every pharmacy that employs or uses pharmacy technicians shall maintain a site-specific training program and manual for training pharmacy technicians to work at that pharmacy. The program shall include training consistent with that specific pharmacy practice to include, but not be limited to, training in proper use of site-specific computer programs and equipment, proper use of other equipment used at the pharmacy in performing technician duties, and pharmacy calculations consistent with the duties at that pharmacy.

B. Every pharmacy shall maintain documentation of successful completion of the site specific training program for each pharmacy technician for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed pharmacy technicians shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

C. Every pharmacy that employs or uses a person enrolled in ~~an approved~~ a pharmacy technician training program pursuant to § 54.1-3321 ~~of~~ of the Code of Virginia shall allow such person to conduct tasks restricted to pharmacy technicians ~~for no more than nine months without that person becoming registered as a pharmacy technician with the board as set forth in 18VAC110-20-101.~~ Every pharmacy using such a person shall have documentation on site and available for inspection showing that the person is currently enrolled in an approved training program and the start date for each pharmacy technician in training only if the person is currently registered as a pharmacy technician trainee.

# Regulations

## 18VAC110-21-10. Definitions.

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"ASHP" means the American Society of Health-System Pharmacists.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the board.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy and has passed approved examinations establishing proficiency in English.

"Inactive license" means a license that is registered with the Commonwealth but does not entitle the licensee to practice, and the holder of which is not required to submit documentation of CE necessary to hold an active license.

"NABP" means the National Association of Boards of Pharmacy.

"NHA" means National Healthcareer Association.

"Pharmacy technician trainee" means a person who is registered with the board and is currently enrolled in an approved pharmacy technician training program and is performing to perform duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with provisions of subsection G of § 54.1-3321 D of the Code of Virginia.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for the voluntary examination and certification of pharmacy technicians.

## 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	\$235
2. Pharmacy intern registration	\$20
3. <u>Pharmacy technician trainee registration</u>	<u>\$20</u>
<del>3.</del> 4. Pharmacy technician registration	\$35
4. <u>5.</u> Approval of a pharmacy technician training program	\$200
<del>5.</del> 6. Approval of a continuing education program	\$130

### D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	\$120
2. Pharmacist inactive license – due no later than December 31	\$60
3. Pharmacy technician registration – due no later than December 31	\$35
4. Pharmacy technician training program	\$100 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license 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	\$40
2. Pharmacist inactive license	\$20
3. Pharmacy technician registration	\$15
4. Pharmacy technician training program	\$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	\$275
2. Pharmacist license after revocation or suspension	\$650
3. Pharmacy technician registration	\$45
4. Pharmacy technician <u>or pharmacy technician trainee</u> registration after revocation or suspension	\$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	\$50
2. Returned check	\$35
3. Duplicate license or registration	\$15
4. Verification of licensure or registration	\$35

**18VAC110-21-40. Unprofessional conduct.**

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to providing patient records to another practitioner or to the patient or the patient's personal representative;
2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;
3. Failing to maintain the confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;
4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

5. Engaging or attempting to engage in 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 the patient's family, including sexual misconduct with a patient or a member of the patient's family or other conduct that results or could result in personal gain at the expense of the patient;
6. Failing to maintain adequate safeguards against the diversion of controlled substances;
7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;
8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;
9. Failing by the pharmacist in charge to ensure that pharmacy interns and pharmacy technicians, and pharmacy technician trainees working in the pharmacy are registered and that such registration is current;
10. Failing to exercise professional judgment in determining whether a prescription meets the requirements of law before dispensing;
11. Obtaining money or property of a patient or client by fraud or misrepresentation;
12. Providing false information or failing to cooperate with an employee of the Department of Health Professions in the conduct on an investigation or inspection;
13. Violating any provision of this chapter, 18VAC110-20, or Chapter 33 (§ 54.1-3300 et seq.) or 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia;
14. Performing any act likely to deceive, defraud, or harm the public; or
15. Having a restriction of a license to practice pharmacy or a registration as a pharmacy technician in another jurisdiction in the United States.

**18VAC110-21-135. Registration as a pharmacy technician trainee.**

A. A person desiring to gain practical pharmacy experience toward completion of a pharmacy technician training program in Virginia shall first register with the board as a pharmacy technician trainee on a form provided by the board prior to engaging in the duties of a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia.

B. In order to be eligible to register as a pharmacy technician trainee, an applicant shall be enrolled in a pharmacy technician training program. An expiration date, not to exceed two years, shall be assigned to the registration to cover the estimated time period for the trainee to complete the practical pharmacy experience required for completion of the training program and pass the required examination. If the trainee is no longer

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enrolled in the training program, takes a voluntary break from the program, or is otherwise not actively progressing toward completion of such program, the registration is no longer valid and shall be returned to the board immediately.

C. A pharmacy technician trainee shall be directly monitored by a supervising pharmacist who holds a current active license and assumes full responsibility for the training and supervision of the trainee.

D. A pharmacy technician trainee shall notify the board in writing of any change in address of record within 14 days of such change.

## **18VAC110-21-140. Application for registration as a pharmacy technician (Effective until July 1, 2022).**

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of a board-approved training program; and
2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification.

~~D. A pharmacy technician trainee enrolled in an approved pharmacy technician training program pursuant to § 54.1-3321 D of the Code of Virginia may perform tasks restricted to pharmacy technicians for no more than nine consecutive months from the date the trainee begins performing duties restricted to a pharmacy technician without becoming registered as a pharmacy technician.~~

## **18VAC110-21-141. Requirements for pharmacy technician training (Effective July 1, 2022).**

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Completion of a pharmacy technician training program that is:
  - a. Jointly accredited by the ASHP and ACPE;
  - b. An accredited training program operated through the Department of Education's Career and Technical Education Program;
  - c. Operated through a federal agency or branch of the military; or
  - d. Accredited by an accreditation body approved by the board.

2. Successfully having passed a national certification examination administered by PTCB or NHA.

C. A pharmacy technician who has previously practiced in another United States jurisdiction may be eligible to obtain registration as a pharmacy technician upon documentation of previous practice and having passed a national certification examination administered by PTCB or NHA.

D. A person who successfully completed or was enrolled in a board-approved pharmacy technician training program but did not successfully pass a national examination prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician after successfully passing a national certification examination administered by PTCB or NHA and submitting to the board documentation of such completion or enrollment in a board-approved pharmacy technician training program and passing examination score.

E. A person who passed a national certification examination administered by PTCB or NHA but did not complete a board-approved pharmacy technician training program prior to July 1, 2022, may be eligible to obtain registration as a pharmacy technician upon documentation of having passed such examination.

## **18VAC110-21-150. Criteria for approval for training programs (Effective until July 1, 2022).**

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee, a sample certificate, and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;
2. The preparation of prescription labels or patient information;
3. The removal of the drug to be dispensed from inventory;
4. The counting, measuring, or compounding of the drug to be dispensed;
5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;
6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and
7. The acceptance of refill authorization from a prescriber or the prescriber's authorized agent provided there is no change to the original prescription.



C. Each program shall have a program director who shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

E. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

F. The program shall maintain records of program participants either on site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion, including the program approval number, to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name, program certificate, program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.

H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

**18VAC110-21-160. Examination. (Repealed.)**

~~A. The board shall approve one or more examinations to test entry level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.~~

~~B. The board may contract with an examination service for the development and administration of a competency examination.~~

~~C. The board shall determine the minimum passing standard on the competency examination.~~

~~D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-21-80 F.~~

**18VAC110-21-170. Renewal and reinstatement of registration.**

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and an e-profile number issued by NABP. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having met the continuing education requirements.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Practicing as a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

~~D. A person who fails to reinstate a pharmacy technician registration within five years of expiration shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination or hold current PTCB certification before applying to be reregistered;~~

1. Take and pass a national certification examination administered by PTCB or NHA;
2. Document completion of 20 hours of continuing education; and
3. Pay the current renewal fee and a reinstatement fee.

**18VAC110-21-180. Requirements for continued competency.**

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of

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approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in 18VAC110-21-120 B or 18VAC110-21-130 B.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Up to one hour of the five hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacy technician, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

E. ~~Original documentation~~ Documentation showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such documentation to the board upon request in a manner to be determined by the board.

V.A.R. Doc. No. R20-6513; Filed January 2, 2021, 10:18 a.m.

## Emergency Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-150).**

**18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-46).**

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

Effective Dates: January 3, 2021, through July 2, 2022.

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](mailto:caroline.juran@dhp.virginia.gov).

### Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*The amendments (i) list drugs and devices that may be initiated by a pharmacist for a patient older than 18 years of age and (ii) provide the protocol to notify a primary care provider, maintain patient records, and protect patient privacy.*

## **18VAC110-20-150. Physical standards for all pharmacies.**

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

I. The physical settings of a pharmacy in which a pharmacist initiates treatment with, dispenses, or administers drugs and devices pursuant to § 54.1-3303.1 of the Code of Virginia and 18VAC110-21-46 shall protect patient confidentiality and comply with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

**18VAC110-21-46. Initiation of treatment by a pharmacist.**

A. Pursuant to § 54.1-3303.1 of the Code of Virginia, a pharmacist may initiate treatment with, dispense, or administer the following drugs and devices to persons 18 years of age or older:

1. Naloxone or other opioid antagonist, including such controlled paraphernalia as defined in § 54.1-3466 of the Code of Virginia as may be necessary to administer such naloxone or other opioid antagonist;

2. Epinephrine;

3. Injectable or self-administered hormonal contraceptives, provided the patient completes an assessment consistent with the United States Medical Eligibility Criteria for Contraceptive Use;

4. Prenatal vitamins for which a prescription is required;

5. Dietary fluoride supplements, in accordance with recommendations of the American Dental Association for prescribing of such supplements for persons whose drinking water has a fluoride content below the concentration recommended by the U.S. Department of Health and Human Services; and

6. Medications covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug.

B. Pharmacists who initiate treatment with, dispense, or administer a drug or device pursuant to subsection A of this section shall:

1. Follow the statewide protocol adopted by the board for each drug or device.

2. Notify the patient's primary health care provider that treatment has been initiated with such drug or device or that such drug or device has been dispensed or administered to the patient, provided that the patient consents to such notification. If the patient does not have a primary health care provider, the pharmacist shall counsel the patient regarding the benefits of establishing a relationship with a primary health care provider and, upon request, provide information regarding primary health care providers, including federally qualified health centers, free clinics, or local health departments serving the area in which the patient is located. If the pharmacist is initiating treatment with, dispensing, or administering injectable or self-administered hormonal contraceptives, the pharmacist shall counsel the patient regarding seeking preventative care, including (i) routine well-woman visits, (ii) testing for sexually transmitted infections, and (iii) pap smears.

3. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

4. Perform the activities in a manner that protects patient confidentiality and complies with the Health Insurance Portability and Accountability Act, 42 USC § 1320d et seq.

VA.R. Doc. No. R21-6488; Filed January 1, 2021, 6:07 p.m.

**BOARD OF PHARMACY****Fast-Track Regulation**

**Title of Regulation:** **18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (amending 18VAC110-21-120).**

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

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

**Public Comment Deadline:** March 3, 2021.

**Effective Date:** March 18, 2021.

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

**Basis:** Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate for continuing education is found in § 54.1-3314.1 I of the Code of Virginia: "The Board shall provide for an inactive status for those pharmacists who do not wish to practice in Virginia. The Board shall require upon request for change from inactive to active status proof of continuing education hours as specified in regulations. No person shall practice in Virginia unless he holds a current active license."

**Purpose:** The purpose of the regulatory change is to allow pharmacists to receive credit toward fulfilling the requirement of three hours of live continuing education by volunteering. To the extent such an allowance is an incentive for a pharmacist to work without compensation in a free clinic or local health department, the proposed rule will improve the health, safety, and welfare of low income citizens who receive pharmacy services from one of those entities.

**Rationale for Using Fast-Track Rulemaking Process:** The amended rule will benefit pharmacists and free clinics or local health departments and will not be controversial.

**Substance:** 18VAC110-21-120 C is amended to allow two hours of live continuing education credit for the delivery of volunteer pharmacy services in accordance with 18VAC110-21-120 D.

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Issues: The possible advantage to the public would be an increase in the amount of volunteer pharmacy services available to low-income individuals receiving health services through a local health department of a free clinic. There would also be an advantage to a pharmacist who is able to fulfill some of the three hours of live continuing education with such service. There are no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to allow up to two continuing education contact hours<sup>1</sup> earned through volunteer pharmacist work to count toward the required minimum of three contact hours that must be obtained in courses or programs that are live or real-time interactive.

Background. The regulation requires that pharmacists complete a minimum of 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. Up to two hours of the 15 contact hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacist, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One contact hour of continuing education is credited for each three hours of providing such volunteer services, as documented by the health department or free clinic.

Of the 15 contact hours required for annual renewal, at least three hours must be obtained in courses or programs that are live or real-time interactive. The current regulation does not allow the contact hours obtained through volunteer pharmacist work to count toward the minimum of three contact hours that are live or real-time interactive.

Estimated Benefits and Costs. The proposal to allow up to two continuing education contact hours earned through volunteer pharmacist work to count toward the required three contact hours that are live or real-time interactive may encourage more pharmacists to provide such volunteer services. Since in order to qualify for continuing education contact hours the volunteer pharmacy services must be provided to low-income individuals receiving health services through a local health department or a free clinic, the proposal may be beneficial in that some low-income individuals may receive pharmacist services that they would not otherwise have received.

Businesses and Other Entities Affected. The proposed amendment potentially affects the 15,360 pharmacists licensed in the Commonwealth, local health departments, and free clinics. The proposal does not produce costs.

Small Businesses<sup>2</sup> Affected: The proposed amendment does not substantively affect small businesses.

Localities<sup>3</sup> Affected.<sup>4</sup> The proposed amendment applies throughout the Commonwealth, but lower-income localities may be disproportionately positively affected in that there may be greater need for volunteer pharmacist services. The proposal does not introduce costs for local governments.

Projected Impact on Employment. The proposed amendment is unlikely to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to substantively affect the use and value of private property or real estate development costs.

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<sup>1</sup>"Contact hour" is defined in the regulation as "the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program."

<sup>2</sup>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."

<sup>3</sup>"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.

<sup>4</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

*The amendment allows a pharmacist to satisfy two hours of the requirement for three hours of live or real-time interactive continuing education by volunteering pharmacy services for three hours.*

**18VAC110-21-120. Requirements for continuing education.**

A. A pharmacist shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

1. One that is approved by the ACPE;
2. One that is approved as a Category I continuing medical education course, the primary focus of which is pharmacy, pharmacology, or drug therapy; or
3. One that is approved by the board in accordance with the provisions of 18VAC110-21-130.

C. Of the 15 contact hours required for annual renewal, at least three hours shall be obtained in courses or programs that

are live or real-time interactive. Included in the three hours, the following may be credited:

1. A maximum of one hour for attendance at a board meeting or formal hearing; ~~or~~
2. A maximum of one hour for serving as a preceptor for a pharmacy student or resident in an accredited school or program or for a foreign-trained student obtaining hours of practical experience; or
3. A maximum of two hours for the delivery of volunteer pharmacy services in accordance with provisions of subsection D of this section.

D. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacist, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

E. The board may grant an extension pursuant to § 54.1-3314.1 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

F. Pharmacists are required to attest to compliance with the CE requirements in a manner approved by the board at the time of their annual license renewal. Following each renewal period, the board may conduct an audit of the immediate past two years CE documents to verify compliance with the requirements. Pharmacists are required to maintain for two years following renewal the original certificates documenting successful completion of CE, showing the date and title of the CE program or activity, the number of CEUs or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists selected for audit must provide these original documents to the board by the deadline date specified by the board in the audit notice.

VA.R. Doc. No. R21-6416; Filed January 1, 2021, 6:10 p.m.

### Emergency Regulation

Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-10, 18VAC110-30-20, 18VAC110-30-21, 18VAC110-30-40, 18VAC110-30-270).**

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

Effective Dates: January 4, 2021, through July 3, 2022.

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

### Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Chapters 609 and 610 of the 2020 Acts of Assembly, the amendments (i) define the term "practitioner" to include nurse practitioners or physician assistants for the purpose of issuance of a limited-use license and (ii) include the allowance for issuance of a limited-use permit for nonprofit facilities for the sale of Schedule VI drugs and devices used in administration of such drugs.*

### **18VAC110-30-10. Definitions.**

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

"Board" means the Virginia Board of Pharmacy.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act.

"Licensee" means a practitioner who is licensed by the Board of Pharmacy to sell controlled substances.

"Personal supervision" means the licensee must be physically present and render direct, personal control over the entire service being rendered or acts being performed. Neither prior nor future instructions shall be sufficient nor shall supervision be rendered by telephone, written instructions, or by any mechanical or electronic methods.

"Practitioner" or "practitioner of the healing arts" means a doctor of medicine, osteopathic medicine or podiatry who possesses a current active license issued by the Board of Medicine. For the purpose of a limited-use permit for a nonprofit facility, a "practitioner" or "practitioner of the healing arts" may also mean a physician assistant with a current active license issued by the Board of Medicine or a nurse practitioner with a current active license issued by the Joint Boards of Nursing and Medicine.

"Sale" means barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as an individual, proprietor, agent, servant or employee. It does not include the gift of manufacturer's samples to a patient.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the controlled substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

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"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

## **18VAC110-30-20. Application for licensure.**

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license. After June 7, 2016, the practitioner shall engage in such sale from a location that has been issued a facility permit.

~~B. In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine. Prior to engaging in the sale of Schedule VI controlled substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances from a nonprofit facility, a doctor of medicine, osteopathic medicine, or podiatry; a nurse practitioner; or a physician assistant shall make application on a form provided by the board and be issued a limited-use license.~~

C. Any disciplinary action taken by the Board of Medicine, or in the case of a nurse practitioner, by the Joint Boards of Nursing and Medicine, against the practitioner's license to practice shall constitute grounds for the board to deny, restrict, or place terms on the license to sell.

## **18VAC110-30-21. Application for facility permit.**

A. After June 7, 2016, any location at which practitioners of the healing arts sell controlled substances shall have a permit issued by the board in accordance with § 54.1-3304.1 of the Code of Virginia. A licensed practitioner of the healing arts shall apply for the facility permit on a form provided by the board.

B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.

1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.

2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.

3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

4. A limited-use facility permit may be issued to a nonprofit facility for the purpose of dispensing Schedule VI controlled

substances, excluding the combination of misoprostol and methotrexate, and hypodermic syringes and needles for the administration of prescribed controlled substances.

C. The executive director may grant a waiver of the security system when storing and selling multiple strengths and formulations of no more than five different topical Schedule VI drugs intended for cosmetic use.

## **18VAC110-30-40. Acts to be performed by the licensee.**

A. The selection of the controlled substance from the stock, any preparation or packaging of a controlled substance or the preparation of a label for a controlled substance to be transferred to a patient shall be the personal responsibility of the licensee.

1. Any compounding of a controlled substance shall be personally performed by the licensee or a registered pharmacy technician under the supervision of the licensee.

2. A licensee may supervise one person who may be present in the storage and selling area to assist in performance of pharmacy technician tasks, as set forth in § 54.1-3321 of the Code of Virginia, provided such person is not licensed to sell controlled substances and is either:

- a. A pharmacy technician registered with the board; or
- b. A licensed nurse or physician assistant who has received training in technician tasks consistent with training required for pharmacy technicians.

3. Unless using one of the board-approved training courses for pharmacy technicians, a licensee who uses a nurse or physician assistant to perform pharmacy technician tasks shall develop and maintain a training manual and shall document that such licensee has successfully completed general training in the following areas:

- a. The entry of prescription information and drug history into a data system or other recordkeeping system;
- b. The preparation of prescription labels or patient information;
- c. The removal of the drug to be dispensed from inventory;
- d. The counting or measuring of the drug to be dispensed to include pharmacy calculations;
- e. The packaging and labeling of the drug to be dispensed and the repackaging thereof;
- f. The stocking or loading of automated dispensing devices or other devices used in the dispensing process, if applicable; and
- g. Applicable laws and regulations related to dispensing.

4. A licensee who employs or uses pharmacy technicians, licensed nurses or physician assistants to assist in the storage and selling area shall develop and maintain a site-specific training program and manual for training to work in that practice. The program shall include training consistent with that specific practice to include, but not be limited to,

training in proper use of site-specific computer programs and equipment, proper use of other equipment used in the practice in performing technician duties, and pharmacy calculations consistent with the duties in that practice.

5. A licensee shall maintain documentation of successful completion of the site-specific training program for each pharmacy technician, nurse or physician assistant for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed persons shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

B. Prior to the dispensing, the licensee shall:

1. Conduct a prospective drug review and offer to counsel a patient in accordance with provisions of § 54.1-3319 of the Code of Virginia; and
2. Inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of sale as certification of the accuracy of, and the responsibility for, the entire transaction.

C. If the record of sale is maintained in an automated data processing system as provided in 18VAC110-30-200, the licensee shall personally place his initials with each entry of a sale as a certification of the accuracy of, and the responsibility for, the entire transaction.

#### **18VAC110-30-270. Grounds for disciplinary action.**

In addition to those grounds listed in § 54.1-3316 of the Code of Virginia, the board may revoke, suspend, refuse to issue or renew a license to sell controlled substances or may deny any application if it finds that the licensee or applicant has had his license to practice medicine, osteopathic medicine, or podiatry or license as a physician assistant or nurse practitioner suspended or revoked in Virginia or in any other state or no longer holds a current active license to practice in the Commonwealth of Virginia.

VA.R. Doc. No. R21-6380; Filed January 4, 2021, 1:02 p.m.

#### **Final Regulation**

**Title of Regulation:** 18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehouseurs (adding 18VAC110-50-55).

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

**Effective Date:** March 3, 2021.

**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](mailto:caroline.juran@dhp.virginia.gov).

#### **Summary:**

*Chapters 241 and 242 of the 2018 Acts of Assembly, which enacted § 54.1-3415.1 of the Code of Virginia, establish the requirements for delivery of Schedule VI devices directly to an ultimate user or consumer on behalf of a medical equipment supplier upon a valid order from a prescriber or upon request from the medical director of a home health agency, nursing home, assisted living facility, or hospice. This action adds 18VAC110-50-55 to implement Chapters 241 and 242.*

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

#### **18VAC110-50-55. Delivery of Schedule VI devices.**

A. In accordance with the provisions of subsection A of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouseur, or nonresident warehouseur licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user or consumer on behalf of a medical equipment supplier.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity named in this subsection and a medical equipment supplier in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and an individual medical equipment supplier or multiple medical equipment suppliers under shared ownership. The agreement shall be applicable to all ultimate users or consumers receiving services from the medical equipment supplier who require delivery of Schedule VI prescription devices.

3. The medical equipment supplier shall represent to the delivering entity that it has complied with the provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a valid order from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of orders of prescribers shall be the responsibility of the medical equipment supplier upon request of the board or delivering entity.

B. In accordance with the provisions of subsection B of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouseur, or nonresident warehouseur licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user's or consumer's residence to be administered by persons authorized to administer such devices, provided that (i) such delivery is made on behalf of a medical director of

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a home health agency, nursing home, assisted living facility, or hospice who has requested the distribution of the Schedule VI prescription device and directs the delivery of such device to the ultimate user's or consumer's residence and (ii) the medical director on whose behalf such Schedule VI prescription device is being delivered has entered into an agreement with the manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesale distributor, warehouse, nonresident warehouse, third-party logistics provider, or nonresident third-party logistics provider for such delivery.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity authorized in this subsection and a medical director of a home health agency, nursing home, assisted living facility, or hospice and in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and the medical director of an individual home health agency, nursing home, assisted living facility, or hospice, or multiple such entities under shared ownership. The agreement shall be applicable to all ultimate users or consumers of the home health agency, nursing home, assisted living facility, or hospice who require delivery of Schedule VI prescription devices.

3. The home health agency, nursing home, assisted living facility, or hospice shall represent to the delivering entity that it has complied with provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a request from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of the request from a prescriber shall be the responsibility of the home health agency, nursing home, assisted living facility, or hospice upon request of the board or delivering entity.

C. The agreement, as required by subdivisions A 1 and B 1 of this section, shall be in written or electronic format and shall be retained in a format available upon request to the board at all times the agreement is in effect and for two years after the date the agreement is terminated or concluded.

D. An agreement shall not contain any patient specific or patient health information that would be subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191.

VA.R. Doc. No. R19-5526; Filed January 1, 2021, 6:11 p.m.

## **Fast-Track Regulation**

**Titles of Regulations: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

**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).**

**18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-20).**

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

Public Hearing Information: No public hearings are currently scheduled.

Public Comment Deadline: March 3, 2021.

Effective Date: March 18, 2021.

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](mailto:caroline.juran@dhp.virginia.gov).

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific mandate for collection of a handling fee is found in the Virginia Debt Collection Act, § 2.2-4805 et seq. of the Code of Virginia.

Purpose: The amendments conform the regulation to the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia in which the General Assembly has determined that the cost for handling returned checks or dishonored credit or debit cards is \$50. The department and its regulatory boards license and discipline health care practitioners with the mission of protecting the health and safety of the public, which must be supported by its licensing and miscellaneous fees.

Rationale for Using Fast-Track Rulemaking Process: The Office of the Comptroller has advised the department that the costs for handling a returned check or dishonored credit card or debit card payment is \$50, as set forth in § 2.2-4805 of the Code of Virginia. Therefore, all board regulations are being amended to delete the returned check fee of \$35 and replace it with a handling fee of \$50. The Office of the Attorney General concurs with amending regulations accordingly but advised that it is not an exempt action. The rulemaking is concurring with financial policy of the Commonwealth and is not expected to be controversial.

Substance: All board regulations are being amended to delete the returned check fee of \$35 and replace it with a handling fee of \$50 for a returned check or dishonored credit card or dishonored debit card.

Issues: There are no primary advantages or disadvantages to the public. The primary advantage to the department is compliance with auditors from the Office of the Comptroller.



Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to amend five of its regulations to state that the handling fee for a returned check or dishonored credit card or debit card is \$50.

Background. Code of Virginia § 2.2-614.1 specifies that:

If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of \$35 or the amount of any costs, whichever is greater, shall be added to such amount.

With the exception of 18VAC110-60 Regulations Governing Pharmaceutical Processors, the Board's current regulations that include fees include a \$35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of \$50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of \$50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs. Based on the view of the Office of the Attorney General that Virginia Code 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is \$50. The Board's proposal therefore conforms the regulations to current law. DHP has indicated that in practice they will not raise the fee to \$50 until this proposed regulatory action becomes effective. The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the \$50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected. The proposal pertains to fee-paying individuals and entities regulated by the Board. As of March 31, 2020, there were 1,373 businesses with controlled substance registrations,<sup>1</sup> 9 continuing education programs, 220 medical equipment suppliers, 186 non-resident manufacturers, 325 non-resident medical equipment suppliers, 28 non-resident outsourcing facilities, 796 non-resident pharmacies, 611 non-resident wholesale distributors, 31 non-resident manufacturers, 129 non-resident third-party logistics providers, 33 non-resident warehouse, 15,360 pharmacists, 1 pharmaceutical processor, 1,787 pharmacies, 1,577 pharmacy interns, 12,819 pharmacy technicians, 135 pharmacy technician training programs, 607 physicians licensed to

dispense drugs to their own patients, 166 facilities where physicians are licensed to dispense drugs to their own patients, 22 pilot/innovative programs,<sup>2</sup> 340 registered physicians for CBD/THC-A oil, 2 repackaging training programs, 44 restricted manufacturers, 6 third-party logistic providers, 109 warehouse, and 64 wholesale distributors regulated by and required to pay fees to the Board.<sup>3</sup> If any of these individuals or entities (other than pharmaceutical processors and registered physicians for CBD/THC-A oil) have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. It is not known whether pharmaceutical processors and registered physicians for CBD/THC-A oil would be charged a \$35 returned check fee if they had a check returned prior to the proposed regulatory action becoming effective.<sup>4</sup> If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses Affected. Types and Estimated Number of Small Businesses Affected. The proposal would potentially affect the 1,373 businesses with controlled substance registrations, 9 continuing education programs, 220 medical equipment suppliers, 186 non-resident manufacturers, 325 non-resident medical equipment suppliers, 28 non-resident outsourcing facilities, 796 non-resident pharmacies, 611 nonresident wholesale distributors, 31 non-resident manufacturers, 129 non-resident thirdparty logistics providers, 33 non-resident warehouse, 1 pharmaceutical processor, 1,787 pharmacies, 135 pharmacy technician training programs, 166 facilities where physicians are licensed to dispense drugs to their own patients, 22 pilot/innovative programs, 2 repackaging training programs, 44 restricted manufacturers, 6 third-party logistic providers, 109 warehouse, and 64 wholesale distributors. Data is not available to determine how many of these entities would qualify as a small business, though many likely would.<sup>5</sup>

Costs and Other Effects. If any of the small entities, other than a small pharmaceutical processor, has a check returned or a credit card or debit card dishonored, the proposal would increase their cost by \$15. Since the current Regulations Governing Pharmaceutical Processors does not include a \$35 returned check charge, it is not clear whether a small pharmaceutical processor would be charged a \$35 returned check fee if they had a check returned prior to the proposed regulatory action becoming effective. If they would not receive the charge, the proposal would increase their costs by \$50 in the event that they have a check returned or a credit card or debit card dishonored.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals

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Localities<sup>6</sup> Affected.<sup>7</sup> The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantially affect the use and value of private property or real estate development costs.

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<sup>1</sup>18VAC110-20-690: "Persons or entities that may be [controlled substance] registered by the board shall include hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, crisis stabilization units, persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought."

<sup>2</sup>Code of Virginia § 54.1-3307.2: "Any person who proposes to use a process or procedure related to the dispensing of drugs or devices or to the practice of pharmacy not specifically authorized by Chapter 33 (§ 54.1-3300 et seq.) of this title or by a regulation of the Board of Pharmacy may apply to the Board for approval to use such process or procedure. The application under this section may only include new processes or procedures, within the current scope of the practice of pharmacy, that relate to the form or format of prescriptions, the manner of transmitting prescriptions or prescription information, the manner of required recordkeeping, the use of unlicensed ancillary personnel in the dispensing process, and the use of new technologies in the dispensing process."

<sup>3</sup>Sources: <https://www.dhp.virginia.gov/about/stats/2020Q3/04CurrentLicenseCountQ3FY2020.pdf>, the current Board regulations, and DHP

<sup>4</sup>The fees for pharmaceutical processors and registered physicians for CBD/THC-A oil are in 18VAC110-60 Regulations Governing Pharmaceutical Processors, which currently does not specify a returned check charge.

<sup>5</sup>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."

<sup>6</sup>"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.

<sup>7</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

*The amendments delete the returned check fee of \$35 and replace it with a handling fee of \$50 to conform the regulations to the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.*

**18VAC110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

- B. Initial application fees.
- |   |       |
|---|-------|
| 1. Pharmacy permit                                | \$500 |
| 2. Permitted physician licensed to dispense drugs | \$500 |
| 3. Medical equipment supplier permit              | \$235 |
| 4. Outsourcing facility permit                    | \$350 |
| 5. Nonresident pharmacy registration              | \$350 |
| 6. Nonresident outsourcing facility registration  | \$350 |
| 7. Controlled substances registrations            | \$120 |
| 8. Innovative program approval.                   | \$325 |

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.

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|---|------|
| 9. Approval of a repackaging training program | \$65 |
|---|------|

C. Annual renewal fees.

- |  |                      |
|--|----------------------|
| 1. Pharmacy permit – due no later than April 30  | \$350                |
| 2. Physician permit to practice pharmacy – due no later than February 28                               | \$350                |
| 3. Medical equipment supplier permit – due no later than February 28                                   | \$235                |
| 4. Outsourcing facility permit – due no later than April 30  | \$350                |
| 5. Nonresident pharmacy registration – due no later than the date of initial registration              | \$350                |
| 6. Nonresident outsourcing facility registration – due no later than the date of initial registration  | \$350                |
| 7. Controlled substances registrations – due no later than February 28                                 | \$120                |
| 8. Innovative program continued approval based on board order not to exceed \$260 per approval period. |                      |
| 9. Repackaging training program  | \$40 every two years |

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                               | \$120 |
| 2. Physician permit to practice pharmacy         | \$120 |
| 3. Medical equipment supplier permit             | \$80  |
| 4. Outsourcing facility permit                   | \$120 |
| 5. Nonresident pharmacy registration             | \$120 |
| 6. Nonresident outsourcing facility registration | \$120 |
| 7. Controlled substances registrations           | \$40  |
| 8. Repackaging training program                  | \$15  |

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                               | \$315 |
| b. Physician permit to practice pharmacy         | \$315 |
| c. Medical equipment supplier permit             | \$275 |
| d. Outsourcing facility permit                   | \$315 |
| e. Nonresident pharmacy registration             | \$150 |
| f. Nonresident outsourcing facility registration | \$315 |
| g. Controlled substances registration            | \$235 |
| h. Repackaging training program                  | \$65  |

F. Application for change or inspection fees for facilities or other entities.

- |   |      |
|---|------|
| 1. Change of pharmacist-in-charge       | \$65 |
| 2. Change of ownership for any facility | \$65 |

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|--|-------|
| 3. Inspection for remodeling or change of location for any facility    | \$300 |
| 4. Reinspection of any facility  | \$300 |
| 5. Board-required inspection for a robotic pharmacy system             | \$300 |
| 6. Board-required inspection of an innovative program location         | \$300 |
| 7. Change of pharmacist responsible for an approved innovative program | \$35  |

G. Miscellaneous fees.

- |   |                      |
|---|----------------------|
| 1. <del>Returned check</del> <u>Handling fee for returned check or a dishonored credit card or debit card</u> | \$35 <del>\$50</del> |
| 2. Duplicate permit or registration   | \$15                 |
| 3. Verification of permit or registration   | \$35                 |

**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                                 | \$235 |
| 2. Pharmacy intern registration                       | \$20  |
| 3. Pharmacy technician registration                   | \$35  |
| 4. Approval of a pharmacy technician training program | \$200 |
| 5. Approval of a continuing education program         | \$130 |

D. Annual renewal fees.

- |   |                       |
|---|-----------------------|
| 1. Pharmacist active license – due no later than December 31        | \$120                 |
| 2. Pharmacist inactive license – due no later than December 31      | \$60                  |
| 3. Pharmacy technician registration – due no later than December 31 | \$35                  |
| 4. Pharmacy technician training program                             | \$100 every two years |

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license 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

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registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

- |   |      |
|---|------|
| 1. Pharmacist license                   | \$40 |
| 2. Pharmacist inactive license          | \$20 |
| 3. Pharmacy technician registration     | \$15 |
| 4. Pharmacy technician training program | \$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  | \$275 |
| 2. Pharmacist license after revocation or suspension   | \$650 |
| 3. Pharmacy technician registration  | \$45  |
| 4. Pharmacy technician registration after revocation or suspension   | \$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   | \$50                 |
| 2. <del>Returned check</del> <u>Handling fee for returned check or a dishonored credit card or debit card</u> | <del>\$35</del> \$50 |
| 3. Duplicate license or registration  | \$15                 |
| 4. Verification of licensure or registration  | \$35                 |

**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: \$235.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$315.

C. Annual renewal fees.

1. License for practitioner of the healing arts to sell controlled substances: \$120.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$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: \$40.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$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: \$195.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$315.

3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: \$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 300.

H. ~~The fee for a returned check~~ handling fee for returned check or a dishonored credit card or debit card shall be ~~\$35~~ \$50.

**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 | \$350 |
| 2. Restricted manufacturer permit    | \$235 |
| 3. Wholesale distributor license     | \$350 |
| 4. Warehouser permit                 | \$350 |

5. Nonresident wholesale distributor registration	\$350
6. Controlled substances registration	\$120
7. Third-party logistics provider permit	\$350
8. Nonresident manufacturer registration	\$350
9. Nonresident warehouser registration	\$350
10. Nonresident third-party logistics provider registration	\$350

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$350
2. Restricted manufacturer permit	\$235
3. Wholesale distributor license	\$350
4. Warehouser permit	\$350
5. Nonresident wholesale distributor registration	\$350
6. Controlled substances registration	\$120
7. Third-party logistics provider permit	\$350
8. Nonresident manufacturer registration	\$350
9. Nonresident warehouser registration	\$350
10. Nonresident third-party logistics provider registration	\$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	\$120
2. Restricted manufacturer permit	\$80
3. Wholesale distributor license	\$120
4. Warehouser permit	\$120
5. Nonresident wholesale distributor registration	\$120
6. Controlled substances registration	\$40
7. Third-party logistics provider permit	\$120
8. Nonresident manufacturer registration	\$120
9. Nonresident warehouser registration	\$120
10. Nonresident third-party logistics provider registration	\$120

E. Reinstatement fees.

1. Any entity attempting to renew a license, 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 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	\$315
b. Restricted manufacturer permit	\$275
c. Wholesale distributor license	\$315
d. Warehouser permit	\$315
e. Nonresident wholesale distributor registration	\$315
f. Controlled substances registration	\$235
g. Third-party logistics provider permit	\$315
h. Nonresident manufacturer registration	\$315
i. Nonresident warehouser registration	\$315
j. Nonresident third-party logistics provider registration	\$315

F. Application for change or inspection fees.

1. Reinspection fee	\$300
2. Inspection fee for change of location, structural changes, or security system changes	\$300
3. Change of ownership fee	\$65
4. Change of responsible party	\$65

G. The handling fee for a returned check or a dishonored credit card or debit card shall be ~~\$35~~ \$50.

H. The fee for verification of license, permit, or registration shall be \$35.

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## 18VAC110-60-20. Fees.

A. Fees are required by the board as specified in this section. Unless otherwise provided, fees listed in this section shall not be refundable.

### B. Registration of practitioner.

- |  |      |
|--|------|
| 1. Initial registration.   | \$50 |
| 2. Annual renewal of registration.   | \$50 |
| 3. Replacement of registration for a qualifying practitioner whose information has changed or whose original registration certificate has been lost, stolen, or destroyed. | \$50 |

### C. Registration by a qualifying patient, parent, or legal guardian.

- |   |      |
|---|------|
| 1. Initial registration of a patient.   | \$50 |
| 2. Annual renewal of registration of a patient.   | \$50 |
| 3. Initial registration of a parent or legal guardian.  | \$25 |
| 4. Annual renewal of registration of a parent or guardian.  | \$25 |
| 5. Replacement of registration for a qualifying patient, parent, or legal guardian whose original registration certificate has been lost, stolen, or destroyed. | \$25 |

### D. Pharmaceutical processor permit.

- |  |          |
|--|----------|
| 1. Application.  | \$10,000 |
| 2. Initial permit.   | \$60,000 |
| 3. Annual renewal of permit.   | \$10,000 |
| 4. Change of name of processor.  | \$100    |
| 5. Change of PIC or any other information provided on the permit application.          | \$100    |
| 6. Change of ownership not requiring a criminal background check.                      | \$100    |
| 7. Change of ownership requiring a criminal background check.                          | \$250    |
| 8. Any acquisition, expansion, remodel, or change of location requiring an inspection. | \$1,000  |
| 9. Reinspection fee.   | \$1,000  |
| 10. Registration of each cannabis oil product.   | \$25     |

E. The handling fee for returned check or dishonored credit card or debit card shall be \$50.

VA.R. Doc. No. R21-6173; Filed January 1, 2021, 6:09 p.m.

## Fast-Track Regulation

**Title of Regulation:** 18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-280).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3447 of the Code of Virginia.

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

**Public Comment Deadline:** March 3, 2021.

**Effective Date:** March 18, 2021.

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

**Basis:** Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific language relating to use of industrial hemp extract by processors is found in §§ 54.1-3408.3 and 54.1-3442.6 of the Code of Virginia.

**Purpose:** Consistent with the specific provisions of § 54.1-3442.6 of the Code of Virginia, regulations specify that oil from industrial hemp must be subject to the same testing standards as those required for cannabis plant extract. Since the product (cannabis oil) may contain oil from industrial hemp, it is essential that the product comply with the same rigorous testing to ensure it can safely be consumed by a patient. The regulation also requires proper storage and handling of hemp oil that will allow a processor to trace the source of such oil in case of a recall. Testing, recordkeeping, and storage and handling standards are necessary to protect public health and safety in the same way in which standards for compounding drugs are intended to protect patients.

**Rationale for Using Fast-Track Rulemaking Process:** Chapter 928 of the 2020 Acts of Assembly authorizes pharmaceutical processors to acquire oil from industrial hemp extract in to be used in formulations of cannabis oil for dispensing to patients. While most of the amendments to 18VAC110-60-280 are conforming the regulation to changes in the law, there are additional requirements relating to recordkeeping and storage and handling that are authorized but not specified in the statute. Therefore, this regulation was deemed appropriate for fast-track rulemaking process but not as an exempt action. Since the law authorizes processors to acquire and utilize industrial hemp oil as of July 1, 2020, it is important to implement this regulation as soon as possible. Processors are aware of this regulation, and it is not expected to be controversial.

**Substance:** Regulations for pharmaceutical processors to use oil from industrial hemp extract are consistent with provisions of subsection I of § 54.1-3442.6 of the Code of Virginia, which requires acquisition from a registered hemp dealer or processor in Virginia and third-party testing of the hemp product by the same testing requirements as those for cannabis plant testing. The regulation also (i) specifies the content of records relating

to such acquisition and the time period for maintenance of the record and (ii) requires policies and procedures for proper storage and handling of the oil, including a process to follow in case of a recall of a product.

Issues: There are no primary advantages or disadvantages to the public. The advantage for hemp growers and dealers is the creation of a new market for their product. The advantage to the processors is the availability of hemp oil to be added to the oil produced from the Cannabis grown in the facility. 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. Chapter 928 (HB1670) of the 2020 Acts of Assembly<sup>1</sup> authorized pharmaceutical processors to acquire oil from industrial hemp extract to be used in formulating cannabis oil for dispensing to patients and requires the same third-party testing requirements for industrial hemp extracts as those for cannabis plant extract. The Board of Pharmacy (Board) proposes to incorporate this legislative change in the regulations. In addition, the Board proposes discretionary changes to further ensure patient safety. These include specifying the content of records relating to such acquisition and the time period for maintenance of the record and requiring policies and procedures for proper storage and handling of the oil, including a process to follow in case of a recall of a product.

Background. Cannabis oil can be extracted from both marijuana and hemp. Both of these are types of the Cannabis sativa family, which are annual flowering plants. Both varieties can contain cannabidiol (CBD), but marijuana contains higher amounts of Tetrahydrocannabinol (THC). THC is one of many cannabinoids identified in cannabis and is the principal psychoactive constituent (the chemical that produces an intoxicated feeling). The federal 2018 Farm Bill considers Cannabis sativa plants with less than 0.3 percent THC to be hemp or industrial hemp. In Virginia, industrial hemp growers, dealers, and processors are regulated separately from pharmaceutical processors. The Virginia Department of Agriculture and Consumer Services (VDACS) administers a registration program for industrial hemp under the Virginia Industrial Hemp Law<sup>2</sup> while the Board regulates the pharmaceutical processors.

The 2020 General Assembly authorized pharmaceutical processors to acquire oil from industrial hemp extract to be used in formulating cannabis oil for dispensing to patients as of July 1, 2020. The Board proposes to incorporate this legislative change in the regulations.

Estimated Benefits and Costs. Industrial hemp extract, which may have no more than 0.3 percent THC, can be produced from industrial hemp and can be used by pharmaceutical processors in formulations of cannabis oil with higher THC content for dispensing to patients. In economic terminology, that means there is some degree of possible substitution between hemp and

marijuana flower extracts. Pursuant to the 2020 legislation, the proposed regulation would allow pharmaceutical processors to purchase hemp extract from industrial hemp dealers or processors.<sup>3</sup> Pharmaceutical processors would likely take advantage of this option if it is economically advantageous. In other words, pharmaceutical processors would be inclined to purchase hemp extract from industrial hemp dealers or processors if doing so is cheaper than the cost of obtaining the marijuana extract by growing it themselves. Generally speaking, that appears to be the case.

This option made possible by the new legislation would allow pharmaceutical processors to reduce their cost of production and create a new market for industrial hemp. The trade would take place only if it is economically advantageous to both parties. Currently there are four licensed pharmaceutical processors in Virginia. Only one of them is actively selling cannabis oil products. The other three are in the startup phase. There are approximately 1,200 registered growers and 337 processors of industrial hemp. However, only 17 of the registered industrial hemp processors have been approved to produce food grade hemp extract, which is the most likely version of the hemp extract that pharmaceutical processors may be interested in purchasing.

The proposed regulation is beneficial because it would allow pharmaceutical processors to acquire suitable hemp extract at lower cost, which may help to bring cannabis oil to market at lower prices than otherwise would be possible. Such sales would also benefit participating industrial hemp processors.

The size of benefits from this proposed change would depend on the magnitude of the quantity and the market value of hemp extract that may be purchased by the pharmaceutical processors. However, there is no data available to estimate the quantity or the market value of hemp extract that may be purchased by the pharmaceutical processors. Currently, there are approximately 7,000 registered users of cannabis oil, but the market appears to be in its infancy and growing fast.

In addition, the Board proposes to specify the content of records relating to such acquisition and the time period for maintenance of the record; and require policies and procedures for proper storage and handling of the oil, including a process to follow in case of a recall of a product. These particular changes are not expected to create any significant economic effects as the processors are already required to maintain records. However, the proposed clarification may improve compliance and help with recalls to avoid some adverse health consequences should a health risk arise with a particular product.

Businesses and Other Entities Affected. The proposed regulation would directly affect four licensed pharmaceutical processors (only one of whom is currently selling cannabis oil products while the other three are in the process of setting up their operations) and approximately 17 food grade industrial hemp processors. To the extent the legislative change creates a new market for the use of industrial hemp and allows

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# Regulations

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pharmaceutical processors to acquire CBD extract at lower cost and reduce cannabis oil product prices, approximately 1,200 hemp growers and over 7,000 cannabis oil consumers may be indirectly affected.<sup>4</sup> None of these entities appear to be disproportionately affected.

Small Businesses<sup>5</sup> Affected: DHP believes one of the four pharmaceutical processors likely qualifies as a small business. However, the proposed amendments do not appear to adversely affect small businesses.

Localities<sup>6</sup> Affected:<sup>7</sup>The proposed amendments do not affect or introduce costs for local governments.

Projected Impact on Employment. The proposed amendments would allow pharmaceutical processors to purchase CBD extract from industrial hemp processors rather than produce it themselves. This may add to demand for labor in the hemp industry while having an offsetting effect on demand by the pharmaceutical processors. The net impact on total employment is unlikely to be significant.

Effects on the Use and Value of Private Property. To the extent pharmaceutical processors purchase CBD extract from the hemp industry, there may be an increase in the demand for and the use of farm land for hemp production and an increase in the value of such land as well as an increase in the asset values of hemp processors. An increase in the asset values of pharmaceutical processors may also be expected due to enabling them to acquire CBD extract at lower cost than otherwise would be possible.

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<sup>1</sup><https://lis.virginia.gov/cgi-bin/legp604.exe?201 ful CHAP0928>

<sup>2</sup><https://law.lis.virginia.gov/vacode/title3.2/chapter41.1/>

<sup>3</sup>Although hemp seed oil is extracted from hemp seeds for other uses, it is the extract from the flowers of the hemp plant that is suitable for cannabis oil products.

<sup>4</sup>Data source: DHP and VDACS

<sup>5</sup>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."

<sup>6</sup>"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.

<sup>7</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to the Economic Impact Analysis:** The Board of Pharmacy concurs with the economic impact analysis of the Department of Planning and Budget.

**Summary:**

*Amendments (i) conform the regulation to § 54.1-3442.6 of the Code of Virginia, which requires acquisition from a registered hemp dealer or processor in Virginia and third-party testing of the hemp product by the same testing requirements as those for cannabis plant testing; (ii) specify*

*the content of records relating to such acquisition and the time period for maintenance of the record; and (iii) require policies and procedures for proper storage and handling of the oil, including a process to follow in case of a recall of a product.*

**18VAC110-60-280. Cultivation and production of cannabis oil.**

A. No cannabis oil shall have had pesticide chemicals or petroleum-based solvents used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of Cannabis crops.

B. Cultivation methods for Cannabis plants and extraction methods used to produce the cannabis oil shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

C. Any Cannabis plant, seed, parts of plant, extract, or cannabis oil not in compliance with this section shall be deemed adulterated.

D. A pharmaceutical processor may acquire oil from industrial hemp extract for the purpose of formulating such oil extract with cannabis plant extract into allowable dosages of cannabis oil provided:

1. The pharmaceutical processor acquires the oil from industrial hemp extract processed in Virginia and in compliance with state or federal law from a registered industrial hemp dealer or processor;

2. The oil from industrial hemp acquired by a pharmaceutical processor is subject to the same third-party testing requirements applicable to cannabis plant extract as verified by testing performed by a laboratory located in Virginia and in compliance with state law; and

3. The industrial hemp dealer or processor provides such third-party testing results to the pharmaceutical processor before oil from industrial hemp is acquired.

E. A pharmaceutical processor acquiring oil from industrial hemp extract shall ensure receipt of a record of the transaction that shows the date of distribution, the names and addresses of the registered industrial hemp dealer or processor distributing the product and the pharmaceutical processor receiving the product, and the kind and quantity of product being distributed. The record of the transaction shall be maintained by the pharmaceutical processor with its records of receipt. Such records shall be maintained by each pharmaceutical processor for three years.

F. A pharmaceutical processor shall maintain policies and procedures for the proper storage and handling of oil from industrial hemp extract, to include a process for executing or



responding to mandatory and voluntary recalls in a manner that complies with 18VAC110-60-250.

VA.R. Doc. No. R21-6516; Filed January 1, 2021, 6:12 p.m.

**BOARD OF COUNSELING**

**Forms**

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

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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 for Board Approved LPC, LMFT and LSATP Supervisor \(rev. 2/2020\)](#)

[Quarterly Evaluation for LPC Licensure \(rev. 12/2019\)](#)

[Licensure Verification of Out-of-State Supervisor \(rev. 12/2019\)](#)

[Application for a License to Practice as a Licensed Professional Counselor by examination or endorsement, online form available at <https://www.license.dhp.virginia.gov/apply/>](#)

[Verification of Supervision for LPC Licensure \(rev. 12/2019\)](#)

[Verification of Required Coursework and Internship for LPC Licensure \(rev. 12/2019\)](#)

[Doctoral Verification of Supervised Internship/Practicum Hours Toward LPC Licensure \(rev. 10/2019\)](#)

[Verification of Degree and Internship for LPC Licensure \(rev. 12/2019\)](#)

[Request for Verification of Virginia Counseling License/Certification/Registration \(rev. 5/2018\)](#)

[Supervision Summary Form for LPC Licensure \(rev. 12/2019\)](#)

[Verification of Clinical Independent Practice as a Licensed Professional Counselor for 24 of the Last 60 Months Immediately Preceding Submission of Application for Licensure \(rev. 04/2018\)](#)

[Continuing Education Summary Form \(LPC\) \(rev. 09/2019\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP \(rev. 4/2018\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP Following Revocation or Suspension \(rev. 4/2018\)](#)

VA.R. Doc. No. R21-6623; Filed January 5, 2021, 2:29 p.m.

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**Title of Regulation: 18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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# Regulations

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## FORMS (18VAC115-30)

~~Certification Application — Certified Substance Abuse Counselor (rev. 1/08).~~

~~Registration of Supervision — Form 1 (rev. 1/08).~~

~~Verification of Supervision, Form CSAC-2VS (rev. 1/08).~~

~~Licensure Verification of Out of State Supervisor, Form CSAC LV (rev. 1/08).~~

~~Substance Abuse Education Outline, Form CSAC EO (rev. 1/08).~~

~~Substance Abuse Education Tasks, Form CSAC ET (rev. 1/08).~~

~~CSAC A Certification Application (rev. 8/09).~~

~~Substance Abuse Education Outline, Form CSAC A EO (rev. 8/09).~~

~~Substance Abuse Education Tasks, Form CSAC A ET (rev. 8/09).~~

~~Verification of Licensure/Certification, Form CSAC VL (rev. 1/08).~~

~~Application for Reinstatement of a Lapsed Certification (rev. 8/07).~~

[Application Instructions Certified Substance Abuse Counselor \(CSAC\) By Examination \(rev. 1/2020\)](#)

[Application Instructions Certified Substance Abuse Counselor \(CSAC\) By Endorsement \(rev. 1/2020\)](#)

[Paper Application Instructions for Initial Registration of Supervision for Certified Substance Abuse Counselor \(CSAC\) \(rev. 1/2020\)](#)

[Paper Application Instructions for Add/Change Registration of Supervision for Certified Substance Abuse Counselor \(CSAC\) \(rev. 1/2020\)](#)

[Certified Substance Abuse Counselor \(CSAC\) Verification of Supervision Form \(rev. 1/2020\)](#)

[CSAC Didactic Training Required for Registration of Supervision \(rev. 1/2020\)](#)

[Request for Termination of Supervision \(rev. 4/2018\)](#)

[Supervisor Out-of-State Licensure Verification \(rev. 4/2018\)](#)

[Application Instructions: Certified Substance Abuse Counselor Assistant \(CSAC-A\) By Examination \(rev. 1/2020\)](#)

[CSAC-A Verification of Experience While Under Supervision \(rev. 4/2018\)](#)

[CSAC-A Didactic Training Verification \(rev. 4/2018\)](#)

[Request for Verification of Virginia Counseling License/Certification/Registration \(rev. 5/2018\)](#)

[Applicant Out-of-State Licensure/Certification Verification \(rev. 4/2018\)](#)

[Application Instructions: CSAC and CSAC-A Reinstatement \(rev. 1/2020\)](#)

[Application for Reinstatement of a CSAC and CSAC-A Following Revocation or Suspension \(rev. 4/2018\)](#)

VA.R. Doc. No. R21-6626; Filed January 5, 2021, 2:28 p.m.

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**Title of Regulation: 18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## 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).~~

~~Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate (rev. 8/07).~~

[Verification of Experience for Rehabilitation Provider Certification \(rev. 5/2018\)](#)

[Applicant Out-of-State Licensure/Certification Verification \(rev. 4/2018\)](#)

[Supervisor Out-of-State Licensure Verification \(rev. 4/2018\)](#)

[Rehabilitation Provider Application for Reinstatement \(rev. 5/2018\)](#)

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## Forms

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**Title of Regulation: 18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**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).~~

[Applicant Out-of-State Licensure Verification/Certification \(rev. 12/2019\)](#)

[Request for Verification of Virginia Counseling License/Certification/Registration \(rev. 5/2018\)](#)

[Verification of Supervision for LMFT Licensure \(rev. 12/2019\)](#)

[Licensure Verification of Out-of-State Supervisor \(rev. 12/2019\)](#)

[Quarterly Evaluation for LMFT Licensure \(rev. 12/2019\)](#)

[Verification of Required Coursework and Internship for LMFT Licensure \(rev. 12/2019\)](#)

[Verification of Degree and Internship for LMFT Licensure \(rev. 12/2019\)](#)

[Doctoral Verification of Supervised Internship/Practicum Hours Toward LMFT Licensure \(rev. 9/2019\)](#)

[Supervision Summary Form for LPC Licensure \(rev. 12/2019\)](#)

[Termination of Supervision for a Licensed Resident \(rev. 12/2019\)](#)

[Verification of Clinical Independent Practice as a LMFT for 24 of the Last 60 Months Immediately Preceding Submission of Application for Licensure \(rev. 5/2018\)](#)

[Application for Board Approved LPC, LMFT and LSATP Supervisor \(rev. 2/2020\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP \(rev. 4/2018\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP Following Revocation or Suspension \(rev. 4/2018\)](#)

[Continuing Education Summary Form for LMFT \(rev. 9/2019\)](#)

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

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**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).~~

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# Regulations

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~~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 Pre-Review of Education Toward LSATP Licensure \(rev. 12/2019\)](#)

[Request for Verification of Virginia Counseling License/Certification/Registration \(rev.5/2018\)](#)

[Applicant Out-of-State Licensure Verification/Certification \(rev. 12/2019\)](#)

[Verification of Supervision for LSATP Licensure \(rev.12/2019\)](#)

[Application for Board Approved LPC, LMFT and LSATP Supervisor \(rev.2/2020\)](#)

[Licensure Verification of Out-of-State Supervisor \(rev. 12/2019\)](#)

[Verification of Required Coursework and Internship for LSATP Licensure \(rev. 12/2019\)](#)

[Verification of Degree and Internship for LSATP Licensure \(rev.12/2019\)](#)

[Termination of Supervision for a Licensed Resident \(rev. 12/2019\)](#)

[Quarterly Evaluation For LSATP Licensure \(rev 12/2019\)](#)

[Supervision Summary Form for LSATP Licensure \(rev.12/2019\)](#)

[Verification of Clinical Practice for 24 of the Last 60 Months in Substance Abuse Treatment Services Immediately Preceding Submission of Application for Licensure \(rev. 4/2018\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP \(rev. 4/2018\)](#)

[Application for Reinstatement of a LPC, LMFT, LSATP Following Revocation or Suspension \(rev. 4/2018\)](#)

[Continuing Education Summary Form for LSATP \(rev. 9/2019\)](#)

[Resident in Substance Abuse Treatment Supervisory Contract \(sample\)](#)

VA.R. Doc. No. R21-6620; Filed January 5, 2021, 2:30 p.m.

## Forms

**REGISTRAR'S 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.

**Title of Regulation: 18VAC115-70. Regulations Governing the Registration of Peer Recovery Specialists.**

**Agency Contact:** Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC115-70)

~~The following form is available online only at <https://www.license.dhp.virginia.gov/apply/>:~~

~~Registered Peer Recovery Specialists Application and Instructions~~

~~Peer Recovery Specialist Application – Form available online only at <https://www.license.dhp.virginia.gov/apply/>~~

VA.R. Doc. No. R21-6622; Filed January 5, 2021, 2:29 p.m.

## Forms

**REGISTRAR'S 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.

**Title of Regulation: 18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.**

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

FORMS (18VAC115-80)

The following forms are available online only at <https://www.license.dhp.virginia.gov/apply/>:

Qualified Mental Health Profession-Adult, Application and Instructions

Qualified Mental Health Profession-Child, Application and Instructions

Supervised Trainee, Application and Instructions

~~Verification of Supervised Experience for a Qualified Mental Health Profession-Adult (eff. 10/2018)~~

~~Verification of supervised experience for a Qualified Mental Health Profession-Child (eff. 10/2018)~~

~~Verification of Internship/Practicum for a Qualified Mental Health Profession (eff. 7/2018)~~

[Verification of Supervised Experience for a Qualified Mental Health Professional-Adult \(QMHP-A\) \(rev. 11/2019\)](#)

[Verification of supervised experience for a Qualified Mental Health Professional-Child \(QMHP-C\) \(rev. 11/2019\)](#)

[Verification of Internship/Practicum for a Qualified Mental Health Professional \(QMHP\) \(rev. 11/2019\)](#)

[Reinstatement Instructions for a Qualified Mental Health Professional-Adult \(QMHP-A\) \(rev. 7/2020\)](#)

[Reinstatement Instructions for a Qualified Mental Health Professional-Child \(QMHP-C\) \(rev. 7/2020\)](#)

VA.R. Doc. No. R21-6624; Filed January 5, 2021, 2:29 p.m.

**BOARD OF PSYCHOLOGY**

**Emergency Regulation**

**Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150, 18VAC125-20-160).**

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

Effective Dates: January 3, 2021, through July 2, 2022.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email [jaime.hoyle@dhp.virginia.gov](mailto:jaime.hoyle@dhp.virginia.gov).

Preamble:

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation*

*be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Chapter 1162 of the 2020 Acts of Assembly mandates membership of the Commonwealth of Virginia in the Psychology Interjurisdictional Compact and requires the Board of Psychology to promulgate regulations to implement the provisions. The amendments add definitions consistent with the compact and revise the standards of practice and the grounds for disciplinary action to cover persons practicing with an E.Passport or temporary authorization to practice in Virginia through the compact.*

**18VAC125-20-10. Definitions.**

**Part I  
General Provisions**

The following words and terms, in addition to the words and terms defined in §§ 54.1-3600 and 54.1-3606.2 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"ASPPB" means the Association of State and Provincial Psychology Boards.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Compact" means the Psychology Interjurisdictional Compact.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"E.Passport" means a certificate issued by ASPPB that authorizes telepsychology services in a compact state.

"Internship" means an ongoing, supervised and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"IPC" means an interjurisdictional practice certificate issued by ASPPB that grants temporary authority to practice in a compact state.

"NASP" means the National Association of School Psychologists.

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"NCATE" means the National Council for the Accreditation of Teacher Education.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

## **18VAC125-20-150. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity and worth of all people, and are mindful of individual differences.

B. Persons licensed by the board and persons practicing in Virginia with an E.Passport or an IPC shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents and research assistants only those responsibilities such persons can be expected to perform competently by education, training and experience. Take ongoing steps to maintain competence in the skills they use;
2. When making public statements regarding credentials, published findings, directory listings, curriculum vitae, etc., ensure that such statements are neither fraudulent nor misleading;
3. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

4. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

5. Avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable. Not exploit or mislead people for whom they provide professional services. Be alert to and guard against misuse of influence;

6. Avoid dual relationships with patients, clients, residents or supervisees that could impair professional judgment or compromise their well-being (to include but not limited to treatment of close friends, relatives, employees);

7. Withdraw from, adjust or clarify conflicting roles with due regard for the best interest of the affected party or parties and maximal compliance with these standards;

8. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation;

9. Keep confidential their professional relationships with patients or clients and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose;

10. Make reasonable efforts to provide for continuity of care when services must be interrupted or terminated;

11. Inform clients of professional services, fees, billing arrangements and limits of confidentiality before rendering services. Inform the consumer prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment. Avoid bartering goods and services. Participate in bartering only if it is not clinically contraindicated and is not exploitative;

12. Construct, maintain, administer, interpret and report testing and diagnostic services in a manner and for purposes which are appropriate;

13. Keep pertinent, confidential records for at least five years after termination of services to any consumer;

14. Design, conduct and report research in accordance with recognized standards of scientific competence and research ethics; and

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology.

**18VAC125-20-160. Grounds for disciplinary action or denial of licensure.**

The board may take disciplinary action or deny a license or authorization to practice in Virginia with an E.Passport or an IPC for any of the following causes:

1. Conviction of a felony, or a misdemeanor involving moral turpitude;
2. Procuring of a license by fraud or misrepresentation;
3. Misuse of drugs or alcohol to the extent that it interferes with professional functioning;
4. Negligence in professional conduct or violation of practice standards including but not limited to this chapter;
5. Performing functions outside areas of competency;
6. Mental, emotional, or physical incompetence to practice the profession;
7. Failure to comply with the continued competency requirements set forth in this chapter; or
8. Violating or aiding and abetting another to violate any statute applicable to the practice of the profession regulated or any provision of this chapter.

VA.R. Doc. No. R21-6421; Filed January 1, 2021, 6:13 p.m.

**BOARD OF SOCIAL WORK**

**Fast-Track Regulation**

**Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-50).**

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

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

**Public Comment Deadline:** March 3, 2021.

**Effective Date:** March 18, 2021.

**Agency Contact:** Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive Suite 300, Richmond, VA 23233-1463, telephone (804)367-4406, FAX (804)527-4435, TDD (-), or email [jaime.hoyle@dhp.virginia.gov](mailto: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 Social Work the authority to promulgate regulations to administer the regulatory system

**Purpose:** While the regulatory change is primarily intended to clarify existing requirements, an amendment to the definition

of face-to-face will allow persons obtaining supervised experience to use technology that is real-time and interactive in providing their social work services to clients. Additionally, an amendment will clarify that persons who have completed their supervised hours but have not yet passed the licensing examination must remain under supervision until licensed if they continue to provide clinical services. The purpose of these regulatory changes is to protect public health and safety in the clinical practice of social work while persons are registered for supervised experience.

**Rationale for Using Fast-Track Rulemaking Process:** There is no mandate for this regulatory change; the impetus comes from recommendations of the Regulation Committee to eliminate burdensome requirements, to clarify current provisions, and to eliminate any ambiguity in the regulations. The regulatory action is less burdensome and does not add any new requirement, so it is not expected to be controversial.

**Substance:** The board proposes amendments to clarify that the definition of face-to-face may include the use of technology in the contact between a supervisee and a client and to add a definition for a supervisory contract. Other amendments (i) clarify that the educational requirements must be completed before persons begin their post-graduate supervised experience; (ii) eliminate the requirement that a supervisee notify the board whenever there is a change of location or supervised experiences; and (ii) reiterate that a person must remain under supervision until issued a license.

**Issues:** The primary advantage to the public is the possibility of greater access to licensed clinical social workers by reducing some of the burden for supervisees. There may be greater access for supervisees who will be able to provide face-to-face services to clients through the use of interactive technology. 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 Social Work (Board) proposes to eliminate the requirement that a supervisee notify the Board whenever there is a change of location or supervised experiences, and clarify that the definition of "face-to-face" may include the use of technology in the contact between a supervisor and a supervisee as well as between a supervisee and a client.

**Background.** This regulation contains rules for the provision of clinical services in social work under supervision. The impetus for the proposed changes comes from recommendations of the Regulation Committee to eliminate burdensome requirements, to clarify current provisions, and to eliminate any ambiguity in the regulations.

**Estimated Benefits and Costs.** One of the proposed amendments would eliminate the requirement that a supervisee notify the Board whenever there is a change of location or

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supervised experiences. Currently, a supervisee must notify the Board whenever there is an addition or change of supervised practice, supervisor, clinical social work services, or location. Each notification of such changes must be accompanied by a \$25 fee. The amendment would eliminate three of the four required notifications: a change or addition of supervised practice, services, or location. The required notification for the change in supervisor would remain the same. According to the Department of Health Professions (DHP), it was determined that the only change that is pertinent is a change in supervisor because that is the person who is accountable to the Board for the services of a supervisee to a client.

DHP reports that 611 notifications were received in 2019 and estimates that half of these notifications were for non-supervisor related changes, which would no longer be required under the proposed language. Thus, this change would eliminate approximately 305 notifications, provide \$7,625 in fee avoidances for the supervisees as well as the time and effort to file these notifications, and reduce the Board's revenues and administrative workload by an equivalent amount.

The Board also proposes to (a) clarify that the definition of "face-to-face" may include the use of interactive technology in the contact between a supervisee and a client and (b) add a definition for a "supervisory contract." These changes would essentially clarify that the use of technology is allowed in the contact between a supervisor and a supervisee as well as between a supervisee and a client. DHP points out that these clarifications are in keeping with current practice: the regulation does not prohibit the use of interactive technology in the delivery of services or supervision, and the use of technology is already believed to be a common practice among the regulated community. However, Board staff receive questions about whether such a practice is allowed, and thus this clarification would be beneficial by addressing such questions and eliminating the need to contact Board staff. A benefit would also be conferred to the extent these changes cause practitioners who are not aware of this option to elect to provide services through interactive means.

Other proposed amendments in the action would clarify that the educational requirements must be completed before a person begins their post-graduate supervised experience and reiterate that a person must remain under supervision until issued a license. These changes are not expected to create any significant economic effects other than clarifying existing requirements.

**Businesses and Other Entities Affected.** This regulation primarily affects persons who are currently approved to provide supervision for clinical social work practice and those persons who want to begin their supervised experience. There are currently 2,697 registered clinical supervisees and the Board received 730 initial applications to begin supervised experience in 2019.<sup>1</sup> No supervisees appear to be adversely<sup>2</sup> or disproportionately affected.

**Small Businesses<sup>3</sup> Affected.** The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>4</sup> Affected.<sup>5</sup>** 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 affect total employment.

**Effects on the Use and Value of Private Property.** One of the proposed changes would eliminate approximately 305 notifications, provide \$7,625 in fee avoidances for the supervisees as well as the time and effort to file these notifications. Consequently, to the extent a supervisee has an ownership interest in a business they may be working for, the asset value of such a business may moderately increase.

The proposed amendments do not affect real estate development costs.

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<sup>1</sup>Data source: DHP

<sup>2</sup>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.

<sup>3</sup>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."

<sup>4</sup>"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.

<sup>5</sup>§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to the Economic Impact Analysis:** The Board of Social Work concurs with the analysis of the Department of Planning and Budget.

**Summary:**

*The amendments (i) clarify that the definition of "face-to-face" may include the use of technology in the contact between a supervisee and a client and add a definition for "supervisory contract"; (ii) clarify that the educational requirements must be completed before persons begin their post-graduate supervised experience; (iii) eliminate the requirement that a supervisee notify the board whenever there is a change of location or supervised experiences; and (iv) clarify the requirement that a person must remain under supervision until issued a license.*

**18VAC140-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Baccalaureate social worker

Board

Casework



Casework management and supportive services

Clinical social worker

Master's social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology, and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention, and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or in the delivery of clinical social work services by a supervisee and may include the use of technology that provides real-time, visual interactive contact among the individuals involved.

"LBSW" means a licensed baccalaureate social worker.

"LMSW" means a licensed master's social worker.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

"Supervisory contract" means an agreement that outlines the expectations and responsibilities of the supervisor and supervisee in accordance with regulations of the board.

**18VAC140-20-50. Experience requirements for a licensed clinical social worker.**

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction. Prior to registration for supervised experience, a person shall satisfactorily complete the educational requirements of 18VAC140-20-49.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of ~~supervised practice, a supervisor, clinical social work services or location:~~

- a. Register on a form provided by the board ~~and;~~
- b. Submit a copy of a supervisory contract completed by the supervisor and the supervised individual supervisee;
- c. Submit an official transcript documenting a graduate degree and clinical practicum as specified in 18VAC140-20-49; and
- ~~b. d.~~ Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

- a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.
- b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised

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experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

## B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom he has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) were not designated as clinical social workers because the jurisdiction did not require such designation.

## C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision;

7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and

8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

## D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.

2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.

3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

4. Supervisees shall not supervise the provision of clinical social work services provided by another person.

5. While providing clinical social work services, a supervisee shall remain under board approved supervision until licensed in Virginia as a licensed clinical social worker.

VA.R. Doc. No. R21-6545; Filed January 1, 2021, 6:14 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Emergency Regulation

**Title of Regulation:** **22VAC40-211. Foster and Adoptive Home Approval Standards for Local Departments of Social Services (adding 22VAC40-211-130).**

**Statutory Authority:** §§ 63.2-217 and 63.2-319 Code of Virginia

**Effective Dates:** January 4, 2021, through July 3, 2022.

**Agency Contact:** C. Garrett Jones, Resource Family Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7527, or email [garrett.jones@dss.virginia.gov](mailto:garrett.jones@dss.virginia.gov).

**Preamble:**

*Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.*

*Pursuant to Chapter 336 of the 2019 Acts of Assembly, the amendments add new regulatory requirements that a local board of social services and a licensed child-placing agency (LCPA) provide foster parents with (i) all reasonably ascertainable background, medical, and psychological records of the child prior to placement; (ii) all information relevant to the child's foster care services; and (iii) copies of all documents related to the foster parent, the foster parent's family, and services provided to the foster home on an ongoing basis. Local boards and LCPAs are also required to notify foster parents of court hearings; scheduled meetings; and decisions made by the court, local board, or LCPA concerning the child's foster care service, changes to the child's case plan, or termination of child's placement in a timely manner. The regulation also requires the timely response to requests for information regarding the child's progress after leaving foster care if it is in the child's best interest. The regulation sets forth a dispute resolution process through which a foster parent may contest an alleged violation by the local board or LCPA, including an appeal process for the foster parent.*

**22VAC40-211-130. Foster parent bill of rights and dispute resolution process.**

**A.** In accordance with § 63.2-902 of the Code of Virginia relating to foster care agreements and the rights of foster parents regarding resolution of disputes, each local department of social services shall implement and ensure that all foster parents receive a copy of the Foster Parent Bill of Rights and that a signed copy of receipt is placed in the foster parent's file.

Foster parents shall abide by all responsibilities as set forth in state and federal law, including all responsibilities set forth in this chapter.

In addition to any claim for benefits pursuant to 42 USC § 671 et seq., and pursuant to § 63.2-905 of the Code of Virginia, all foster parents have the following rights regarding collaboration, communication, access, and transparency:

1. To be regarded as the primary caretaker of a child placed in foster care and to be treated with dignity, respect, trust, value, and consideration, including the local department giving due consideration to the foster parent's family values, traditions, and beliefs;

2. To receive copies of all documents related to the foster parent, the foster parent's family, and ongoing services provided to the foster home;

3. To be considered part of the foster care team and to be able to contribute input regarding the child's permanency plan and receive copies of the plan;

4. To be provided all reasonably ascertainable background, medical, and psychological records of the child prior to placement, at the initial placement, or at any time during the placement of a child in foster care;

5. To be provided all information relevant to the child's foster care services as allowed by federal and state law;

6. To be notified of court hearings and scheduled meetings;

7. To be informed of decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care services;

8. To be able to communicate, to the extent permitted under federal and state law, with professionals who work directly with the child in foster care, including therapists, physicians, and teachers;

9. To be informed in a timely manner of changes to the child's case plan or the termination of the child's placement;

10. To be afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities;

11. To be provided with reimbursements for costs associated with foster care services in a timely manner;

12. To be provided with a method to contact the local board or licensed child-placing agency for assistance 24 hours a day and seven days a week; and

13. To receive a timely response from the local department of social services regarding whether or not information may be provided to requests for information regarding the child's progress after leaving foster care.

**B.** Foster parents have a right to file a complaint regarding alleged violations of the regulations governing collaboration,

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# Regulations

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communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents. When filing such a complaint, foster parents must follow the following steps:

1. The foster parent shall contact the service worker assigned to the foster home within 10 business days and provide a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child placing agencies, and the foster parents and attempt to resolve the dispute.

2. The service worker shall respond within five business days and explain any corrective action to be taken in response to the foster parent's complaint.

3. If the foster parent and service worker are unable to resolve the complaint informally, the foster parent may file a written complaint through the dispute resolution process with the local board's foster care supervisor or assigned designee.

a. The written complaint shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and a copy of the service worker's response.

b. The written complaint shall be sent to the supervisor and must be received by the supervisor within 10 business days of the foster parent receiving the service worker's response.

4. The foster care supervisor or assigned designee shall respond to the complaint in writing within five business days setting forth all findings regarding the alleged violation and any corrective action taken.

5. If the foster parent disagrees with the findings or corrective actions proposed by the foster care supervisor or assigned designee, the foster parent may appeal the decision to the local director by filing a written notice of appeal.

a. The notice of appeal shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and a copy of the foster care supervisor or assigned designee's findings or recommendations.

b. The notice of appeal shall be sent to the local director and must be received by the local director within 10 business days of the foster parent receiving the supervisor's response.

6. The local director shall hold a meeting between all parties within seven business days to gather any information necessary to determine (i) the validity of the alleged

violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and (ii) the appropriateness of any recommendations for corrective action made by the family services specialist and foster care supervisor or assigned designee.

7. A summary of the meeting shall be documented in writing by the service worker after approval by the foster care supervisor or assigned designee.

8. Following such meeting and documentation, the local director shall issue to all parties written findings and, when applicable, recommendations for corrective actions.

C. The dispute resolution process set forth in subsection B of this section does not apply to a complaint related to the denial or failure of a local board to act upon an individual's claim for benefits. Complaints related to a claim for benefits shall be appealable pursuant to 42 USC § 671(a)(12) and 22VAC40-201-115.

VA.R. Doc. No. R21-6042; Filed January 4, 2021, 10:49 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER SEVENTY-FOUR (2020)

### **Protecting Businesses from Increasing Cost of Unemployment Insurance**

#### Importance of the Issue

Due to the novel coronavirus (COVID-19) public health emergency, many Virginians are out of work due to business closures, school closures, and other health-related emergencies. The United States Department of Labor has greatly expanded the definition of who is eligible for unemployment compensation benefits, the period of time a person may be on unemployment compensation benefits, and the amount of unemployment pay a dislocated worker receives per week. The increase in workers who are eligible as well as the increase in funds distributed to families in the Commonwealth has depleted the Virginia Unemployment Insurance Trust Fund, and resulted in greatly increased levels of employer benefit charges and anticipated increases in the tax rates of covered employers under the Virginia Unemployment Compensation Act.

In response to this crisis, the United States Department of Labor's Employment and Training Administration has issued guidance letters (Federal Guidance) regarding the broad, emergency flexibility that States have to provide temporary relief to unemployed individuals and employers directly impacted by COVID-19. Pursuant to that guidance and its own authority, the Virginia Employment Commission (Commission) has already taken action with the United States Department of Labor to secure benefits for Virginians and request and repay Title XII advances from the Federal Unemployment Account.

However, there is still work that the Commission can do to lessen the tax burden on businesses that has resulted from record unemployment. Under the Federal Guidance, the Virginia Employment Commission may also relax its ordinary requirements in calculating the annual statement of the employers' benefit charges and taxes for the preceding fiscal year because of the historic demands on the Commonwealth's unemployment system and resulting employer benefit charges during this pandemic. Pursuant to that guidance, the Virginia Employment Commission must take action to provide relief to employers whose experience rating accounts have been chargeable with overwhelming amounts of benefits attributable to record high rates of unemployment during the COVID-19 pandemic.

#### Directive

Therefore, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia, Section 2.2-104 of the Code of Virginia, Item 131, Section F, Chapter 56 of the Acts of Assembly of the 2020 Special Session I, § 44-146.17 of the Code of Virginia, in furtherance of Amended Executive Order 51 (2020), and my continuing and ultimate authority and responsibility to act in such matters, I hereby delegate to the Commissioner of the Virginia Employment

Commission the following authority and responsibility. The Commissioner shall:

- Calculate the appropriate tax rate of each covered employer whose experience rating account has been chargeable with benefits for the second quarter (April 2020, May 2020, and June 2020) of the calendar year 2020;
- Modify the annual computation to omit addition of the benefits for the second quarter (April 2020, May 2020, and June 2020) of the calendar year 2020, that she may calculate and provide to every covered employer by December 31<sup>st</sup>, or as soon as practical thereafter, a statement of the employer's benefit charges and taxes for the preceding fiscal year under Article 4 of Title 60.2 of the Code of Virginia, and as contained in the Virginia Unemployment Compensation Act;
- Calculate a proper variation in the computation of the employers' benefit charges for the preceding fiscal year;
- Execute any necessary agreements with the United States Department of Labor related to continued implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 15 USC § 9001, et seq., for such other temporary tax relief for such covered employers during this public health emergency.

#### Effective Date of this Executive Order

This Executive Order shall be effective upon its signing and remain in full force and effect until the expiration of Amended Executive Order 51 unless sooner amended or rescinded.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of December, 2020.

/s/ Ralph S. Northam  
Governor

## EXECUTIVE ORDER NUMBER SEVENTY-FIVE (2020)

### **Declaration of a State of Emergency Due to Civil Unrest in Washington, D.C. and Potential Civil Unrest in the Commonwealth**

#### Importance of the Issue

On this day, January 6, 2021, I declare that a state of emergency exists in the Commonwealth of Virginia due to potential civil unrest that poses a danger to public safety. Due to significant events in Washington, District of Columbia, the Commonwealth is at a heightened risk of civil unrest that may require intervention to restore order, ensure the safety of the public, protect property, and provide additional resources to support our local, state, and federal partners. Specifically, violent protests in Washington, D.C. have led its Mayor to declare a state of emergency and impose a curfew. The District also requested assistance from the Commonwealth to address this unrest and restore order to our nation's Capital.

There is significant concern that the unrest unfolding in our nation's Capital may spark violence in the Commonwealth.

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# Governor

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This is of particular concern with respect to areas of the Commonwealth in close proximity to the District. To alleviate that potential, the Mayor of the City of Alexandria and the Chair of Arlington County Board requested curfews in the City of Alexandria and the County of Arlington.

The Commonwealth has a compelling interest to maintain peace and order in the face of escalating tension. The effects of this civil unrest constitute an emergency wherein human lives and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia (Code). Action is necessary to preserve life and property and to alleviate the conditions caused by this situation.

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, and as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim that a state of emergency exists in the Commonwealth of Virginia. Accordingly, I direct state and local governments to render appropriate assistance to prepare for and respond to this situation, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.
2. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.
3. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.
4. Activation of the Virginia National Guard to State Active Duty to assist in mitigating this emergency as well as providing support to Washington, D.C. pursuant to the National Guard Mutual Assistance Compact, § 44-54.1 et seq. and the Emergency Management Assistance Compact, § 44-146.28:1 et seq. of the Code, as well as any other applicable law.

5. Persons traveling to and from home, work, or places of worship;

6. Authorization of a maximum of \$2,750,000.00 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 U.S.C. § 5121 et seq. Included in this authorization is \$750,000.00 for the Department of Military Affairs.

Further, I declare that the City of Alexandria and the County of Arlington shall be under a curfew between the hours of 6 p.m., January 6, 2021 and 6 a.m., January 7, 2021. Unless extended by further executive order, that curfew shall end at 6:01 a.m. January 7, 2021. While the curfew is in place, no person shall be present on any street, road, alley, avenue, park, or other public place in the City of Alexandria and the County of Arlington with the following exceptions:

- Hospital personnel;
- Members of the press;
- State and City of Alexandria or County of Arlington employees and volunteers;
- Military personnel including but not limited to national guard troops;
- Private emergency medical transport workers;
- Travel to and from public meetings of the City of Alexandria and the County of Arlington;
- Persons seeking emergency services; and
- Other emergency workers.

Nothing in this Order shall be construed to prohibit or restrict travel to a hospital in the event of a medical emergency, nor shall such travel be considered in violation of this Order.

Further, in the event of any conflict between this Order and Executive Order 72, Order of Public Health Emergency Nine, Section I, this Order governs.

Violation of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code.

#### Effective Date of this Executive Order

This Order shall be effective immediately, and with the exception to the provisions instituting the curfews, shall remain in full force and effect until February 6, 2021, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 6th day of January, 2021.

/s/ Ralph S. Northam  
Governor

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# GUIDANCE DOCUMENTS

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## 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 AGRICULTURE AND CONSUMER SERVICES

Title of Document: [Virginia Produce Safety Law and Related Regulations Civil Penalty Matrix Guidelines for Enforcement.](#)

Public Comment Deadline: March 3, 2021.

Effective Date: March 4, 2021.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, or email [ryan.davis@vdacs.virginia.gov](mailto:ryan.davis@vdacs.virginia.gov).

### STATE BOARD OF EDUCATION

Title of Document: [Career and Technical Education Work-Based Learning Guide.](#)

Public Comment Deadline: March 3, 2021.

Effective Date: July 1, 2021.

Agency Contact: George Willcox, Director of Career and Technical Education, Operations and Accounting, State Board of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2052, or email [george.willcox@doe.virginia.gov](mailto:george.willcox@doe.virginia.gov).

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Titles of Documents: [Virginia Enterprise Zone Agreed Upon Procedures for CPA Attestation, Grant Year 2020.](#)

[Virginia Enterprise Zone Job Creation Grant Instruction Manual, Grant Year 2020.](#)

[Virginia Enterprise Zone Real Property Investment Grant Instruction Manual, Grant Year 2020.](#)

Public Comment Deadline: March 3, 2021.

Effective Date: March 4, 2021.

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, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

### DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: [Disability Accommodations Process and Guidelines \(NEW\).](#)

[Obtaining a Virginia Driver's License or Identification \(ID\) Card.](#)

[Obtención de una licencia de conducción de Virginia o una tarjeta de identificación \(ID\).](#)

[Virginia DMV Title VI Program Compliance Plan \(NEW\).](#)

Public Comment Deadline: March 3, 2021.

Effective Date: March 4, 2021.

Agency Contact: Melissa K. Velazquez, Legislative Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email [melissa.velazquez@dmv.virginia.gov](mailto:melissa.velazquez@dmv.virginia.gov).

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# GENERAL NOTICES

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## AIR POLLUTION CONTROL BOARD

### Proposed Revision to Plan to Attain and Maintain the National Ambient Air Quality Standard for Ozone, State Implementation Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the federal Clean Air Act.

Purpose of notice: DEQ is seeking comment on the issue of whether a regulation amendment should be submitted as a revision to the SIP.

Public comment period: February 1, 2021, to March 3, 2021.

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.

Public comment stage: The regulation amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Code of Virginia because it is necessary to meet the requirements of the federal Clean Air Act and does not differ materially from the pertinent EPA regulations. Since the amendment is exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited under "purpose of notice" and not on the content of the regulation amendment.

Description of proposal: Article 43 (Emission Standards for Municipal Solid Waste Landfills) of 9VAC5-40 was originally designed to control two separate pollutants: (i) ozone in the Northern Virginia ozone nonattainment area as required by § 110 of the Clean Air Act and implemented by 40 CFR Part 51 and (ii) nonmethane organic compounds as required by § 111(d) of the Clean Air Act and implemented by Subpart Cc of 40 CFR Part 60, which is applicable statewide. On August 29, 2016 (81 FR 59276), EPA promulgated new emissions guidelines for municipal solid waste landfills as Subpart Cf of 40 CFR Part 60. To adopt the requirements of Subpart Cf while maintaining the state-only requirements specific to the

Northern Virginia ozone nonattainment area, the board promulgated a new Article 43.1 and amended Article 43 to include transitional text (Revision H16). This enabled the adoption of the new statewide standards without affecting the more restrictive requirements of Article 43 applicable to the nonattainment area. The § 111(d) portion of Revision H16 was submitted to EPA as a § 111(d) plan revision and approved June 23, 2020 (85 FR 37568). The department now seeks to amend the § 110 SIP to incorporate the changes to Article 43 effected by Revision H16.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

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 on the last day of the comment period. All faxes must have a cover page that lists the intended recipient. All materials received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices website at <https://www.deq.virginia.gov/permits-regulations/public-notices>. 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.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for Amelia Enterprises Inc., Facilities 4039618 and 4023056

The State Water Control Board proposes to issue a consent special order to Amelia Enterprises Inc. for alleged violation of the State Water Control Law at 7730 Military Road, Amelia, Virginia 23002 and 9024 Woodman Road, Richmond, Virginia 23228. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact listed will accept



comments by email or postal mail from February 1, 2021, to March 4, 2021.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for BVU Authority**

An enforcement action has been proposed for the BVU Authority for violations of the State Water Control Law in the City of Bristol, Virginia and Washington 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](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or postal mail from February 1, 2021, through March 3, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for DAS Brothers Inc.**

The State Water Control Board proposes to issue a consent special order to DAS Brothers Inc. for alleged violation of the State Water Control Law at 523 South Washington Highway, Ashland, Virginia 23005. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or postal mail from February 1, 2021, to March 4, 2021.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for the Town of Honaker**

An enforcement action has been proposed for the Town of Honaker for violations of the State Water Control Law at the Honaker sewage treatment plant in Russell County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or postal mail from February 1, 2021, through March 3, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for Norfolk Southern Railway Company**

An enforcement action has been proposed for Norfolk Southern Railway Company for violations of the State Water Control Law at Railway Mile Post D16.4, near Hurley in Buchanan 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](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or postal mail from February 1, 2021, through March 3, 2021.

Contact Information: Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for PAPCO Inc.**

An enforcement action has been proposed for PAPCO Inc. for violations of the State Water Control Law in Newport News, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Russell Deppe will accept comments by email at [russell.deppe@deq.virginia.gov](mailto: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 February 1, 2021, to March 2, 2021.

### **Proposed Enforcement Action for Richmond Petroleum Marketing Inc.**

The State Water Control Board proposes to issue a consent special order to Richmond Petroleum Marketing Inc. for alleged violation of the State Water Control Law at 2301 Mechanicsville Turnpike, Richmond, Virginia 23223. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person listed will accept comments from February 1, 2021, through March 4, 2021.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 698.4178, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

### **Proposed Enforcement Action for Sydnor Utilities Inc.**

An enforcement action has been proposed for Sydnor Utilities Inc. for violations of the State Water Control Law and regulations at the Cedar Crest Subdivision in King William County. A description of the proposed action is available at the office listed or from the contact person listed. Comments will

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## General Notices

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be accepted by the contact person from February 1, 2021, through March 3, 2021.

**Contact Information:** Lee Crowell, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, or email [lee.crowell@deq.virginia.gov](mailto:lee.crowell@deq.virginia.gov).

### **Proposed Enforcement Action for Taff and Frye Company Inc.**

An enforcement action has been proposed for Taff and Frye Company Inc. for violations of the State Water Control Law in Bristol, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person listed will accept comments by email or postal mail from February 1, 2021, through March 3, 2021.

**Contact Information:** Jonathan Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email [jonathan.chapman@deq.virginia.gov](mailto:jonathan.chapman@deq.virginia.gov).

### **Proposed Enforcement Action for Varsha 10504 LLC**

The State Water Control Board proposes to issue a consent special order to Varsha 10504 LLC for alleged violation of the State Water Control Law at 10504 Patterson Avenue, Richmond, Virginia 23838. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff person listed will accept comments by email or postal mail from February 1, 2021, to March 4, 2021.

**Contact Information:** Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov).

## **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](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <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.

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# ERRATA

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## STATE CORPORATION COMMISSION

Title of Regulation: **20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators.**

Publication: 37:1 VA.R. 151-236 August 31, 2020.

Correction to Final Regulation:

Page 167, 20VAC5-314-50 A, end of line 4, after "Schedule 6 of" replace "20VAC5-315-170" with "[ ~~20VAC5-315-170~~ 20VAC5-314-170 ]"

VA.R. Doc. No. R20-5389; Filed January 7, 2021, 10:11 a.m.

## STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-665. Child Care Program.**

Publication: 37:2 VA.R. 454-455 September 2, 2020.

Correction to Final Regulation:

Page 455, column 2, 22VAC40-665-530, subdivision 5, replace "22VAC-665-580" with "[ ~~22VAC-665-580~~ 22VAC40-665-580 ]"

VA.R. Doc. No. R21-6435; Filed January 15, 2021, 1:53 p.m.

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# Errata

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