



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 38 ISS. 15

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

MARCH 14, 2022

### TABLE OF CONTENTS

|   |      |
|---|------|
| <b>Register Information Page</b> .....  | 2115 |
| <b>Publication Schedule and Deadlines</b> .....   | 2116 |
| <b>Petitions for Rulemaking</b> .....   | 2117 |
| <b>Periodic Reviews and Small Business Impact Reviews</b> .....   | 2118 |
| <b>Regulations</b> .....  | 2123 |
| 4VAC20-450. Pertaining to the Taking of Bluefish (Final) .....  | 2123 |
| 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (Emergency) .....  | 2123 |
| 4VAC20-1150. Pertaining to Charter Boat and Head Boat Fisheries (Final) .....   | 2124 |
| 4VAC20-1180. Pertaining to Fishing Guides, Charter Boat, and Head Boat Fisheries (Final) .....                              | 2125 |
| 4VAC20-1270. Pertaining to Atlantic Menhaden (Final) .....  | 2127 |
| 17VAC5-40. Regulations Governing Contextualization of Monuments or Memorials for<br>Certain War Veterans (Fast-Track) ..... | 2128 |
| 18VAC105-20. Regulations Governing the Practice of Optometry (Proposed) .....   | 2132 |
| 22VAC30-80. Auxiliary Grants Program (Final) .....  | 2133 |
| 22VAC40-191. Background Checks for Child Welfare Agencies (Action Withdrawn) .....  | 2134 |
| 22VAC40-192. Background Checks for Child Welfare Agencies (Action Withdrawn) .....  | 2134 |
| 24VAC35-20. Policy and Procedure Manual (Proposed) .....  | 2134 |
| 24VAC35-30. VASAP Case Management Policy and Procedure Manual (Proposed) .....  | 2136 |
| 24VAC35-40. Certification Requirements Manual (Proposed) .....  | 2137 |
| <b>Governor</b> .....   | 2139 |
| <b>Guidance Documents</b> .....   | 2142 |
| <b>General Notices</b> .....  | 2143 |

Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.



---

# THE VIRGINIA REGISTER INFORMATION PAGE

---

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in

which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## EMERGENCY REGULATIONS

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

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

---

# PUBLICATION SCHEDULE AND DEADLINES

---

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

---

## March 2022 through April 2023

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u>   | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 38:16                | March 9, 2022                        | March 28, 2022              |
| 38:17                | March 23, 2022                       | April 11, 2022              |
| 38:18                | April 6, 2022                        | April 25, 2022              |
| 38:19                | April 20, 2022                       | May 9, 2022                 |
| 38:20                | May 4, 2022                          | May 23, 2022                |
| 38:21                | May 18, 2022                         | June 6, 2022                |
| 38:22                | June 1, 2022                         | June 20, 2022               |
| 38:23                | June 15, 2022                        | July 4, 2022                |
| 38:24                | June 29, 2022                        | July 18, 2022               |
| 38:25                | July 13, 2022                        | August 1, 2022              |
| 38:26                | July 27, 2022                        | August 15, 2022             |
| 39:1                 | August 10, 2022                      | August 29, 2022             |
| 39:2                 | August 24, 2022                      | September 12, 2022          |
| 39:3                 | September 7, 2022                    | September 26, 2022          |
| 39:4                 | September 21, 2022                   | October 10, 2022            |
| 39:5                 | October 5, 2022                      | October 24, 2022            |
| 39:6                 | October 19, 2022                     | November 7, 2022            |
| 39:7                 | November 2, 2022                     | November 21, 2022           |
| 39:8                 | November 14, 2022 ( <b>Monday</b> )  | December 5, 2022            |
| 39:9                 | November 30, 2022                    | December 19, 2022           |
| 39:10                | December 14, 2022                    | January 2, 2023             |
| 39:11                | December 27, 2022 ( <b>Tuesday</b> ) | January 16, 2023            |
| 39:12                | January 11, 2023                     | January 30, 2023            |
| 39:13                | January 25, 2023                     | February 13, 2023           |
| 39:14                | February 8, 2023                     | February 27, 2023           |
| 39:15                | February 22, 2023                    | March 13, 2023              |
| 39:16                | March 8, 2023                        | March 27, 2023              |
| 39:17                | March 22, 2023                       | April 10, 2023              |

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# PETITIONS FOR RULEMAKING

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Initial Agency Notice

**Title of Regulation: 18VAC85-150. Regulations Governing the Practice of Behavior Analysis.**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2957.16 of the Code of Virginia.

**Name of Petitioner:** Michael Moates.

**Nature of Petitioner's Request:** Remove the specific requirement for Behavior Analyst Certification Board certification and accept certification from an entity that is nationally accredited to certify practitioners of behavior analysis.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Virginia Registrar of Regulations, published on March 14, 2022, and posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Comment on the petition will be requested until April 13, 2022, and may be posted on the Town Hall or sent to the board.

Following receipt of all comments on the petition to amend the regulation, the matter will be considered by the Advisory Board on Behavior Analysis on May 23, 2022, which will make a recommendation to the full board for its meeting on June 16, 2022.

**Public Comment Deadline:** April 13, 2022.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. PFR22-21; Filed February 16, 2022, 12:17 p.m.

### BOARD OF PHARMACY

#### Initial Agency Notice

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

**Name of Petitioner:** Renae M. Cregger.

**Nature of Petitioner's Request:** Exempt automated dispensing systems exclusively stocked with drugs that would be kept in a stat-drug box pursuant to 18VAC110-20-550 or an emergency drug kit pursuant to 18VAC110-20-540 and are solely administered for stat or emergency use from the

requirements of subdivisions 1, 4 a, and 4 b of 18VAC110-20-555.

**Agency Plan for Disposition of Request:** The petition will be published on March 14, 2022, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment ending April 13, 2022. The request to amend the regulation and any comments for or against the petition will be considered by the board at its meeting scheduled for June 6, 2022. The petitioner will receive information on the board's decision after that date.

**Public Comment Deadline:** April 13, 2022.

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

VA.R. Doc. No. PFR22-23; Filed February 22, 2022, 8:14 a.m.

### BOARD OF PSYCHOLOGY

#### Initial Agency Notice

**Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology.**

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

**Name of Petitioner:** Basharat Shah.

**Nature of Petitioner's Request:** Establish guidelines and qualifications for psychologists involved in custody and visitation cases and prohibit those who do not meet those qualifications from testifying in court.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition has been filed with the Virginia Registrar of Regulations for publication on March 14, 2022, with a request for comment to be received until April 13, 2022. The petition will also be posted for comment on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov).

At the next meeting after the comment period, which is scheduled for June 28, 2022, the board will consider the petition and any comment received to decide whether or not to initiate the rulemaking process.

**Public Comment Deadline:** April 13, 2022.

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

VA.R. Doc. No. PFR22-22; Filed February 17, 2022, 2:06 p.m.

---

# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

---

## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections conducted a periodic review and a small business impact review of **1VAC20-20, General Administration**, and determined that this regulation should be amended. The department is publishing its report of findings dated January 19, 2022, to support this decision.

The regulation is necessary for the protection of the public health, safety, and welfare as it coincides with statutory mandates that prescribe the State Board of Elections (SBE) and the Department of Elections' (ELECT's) organization to ensure the efficient and effective administration of elections. The regulation is clearly written and easily understandable.

ELECT recommends this regulation remain in effect with amendments. The amendments to this regulation reflect the structural changes after the creation of ELECT and the increase in membership of the SBE. The Commissioner of ELECT handles administrative matters for the SBE.

This regulation is authorized by statute. ELECT has determined this regulation is effective as amended and does not burden small businesses. There are no further known overlaps or conflicts with federal or state law.

Contact Information: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219.



## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**, and determined that this regulation should be amended. The department is publishing its report of findings dated February 15, 2022, to support this decision.

This regulation is necessary to carry out the licensure requirements of Title 37.2 of the Code of Virginia and meets the requirements of Executive Order 14 (2018) in that the regulation helps to protect the health, safety, and welfare of

individuals needing licensed services as it articulates specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services. The structure of the regulation is straightforward.

Related to this periodic review, an overhaul of this regulation has been underway since the last periodic review. Three of six planned draft chapters (one general chapter and five service-specific chapters) were published for public comment in May 2021 and can be viewed at <https://www.townhall.virginia.gov/L/GeneralNotice.cfm?BoardID=65&DateSelection=Expired>.

The regulation is needed to carry out the licensure requirements in Title 37.2 of the Code of Virginia. The nature of complaints or comments received concerning the regulation during the periodic review related to one specific situation and termination and discharge criteria set by providers. The complexity of the regulation is straightforward. It articulates specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services. The regulation is intended to establish structures for the health, safety, and welfare of some of Virginia's most vulnerable citizens; therefore, some parts of the regulation are more detailed by necessity to help ensure the safety standards.

There are parts of the regulation that are closely associated with regulations from the Department of Health Professions Board of Counseling, the Virginia Department of Health, and the Department of Medical Assistance Services, but the regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was evaluated four years ago and an overhaul of the regulation has been underway since that time. Technology, economic conditions, or other factors changed during the pandemic. While the department anticipates some of these factors will someday return to their pre-pandemic status, there is also an understanding that some systemic changes resulting from COVID may be more permanent. The overhaul of the Licensing Regulations will address any permanent changes.

The agency's decision to amend the chapter may minimize the economic impact of the regulation on small businesses by clarifying expectations for providers. The agency's decision to amend the chapter may also cause an economic impact on small businesses as a goal of the overhaul is to raise the bar of licensing.

Contact Information: 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) 385-6549.

---

# Periodic Reviews and Small Business Impact Reviews

---

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-115, Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services**, and determined that this regulation should be amended. The department is publishing its report of findings dated February 14, 2022, to support this decision.

This regulation is necessary to carry out the human rights requirements of Chapter 4 (§ 37.2-400 et seq.) of Title 37.2 of the Code of Virginia and meets the requirements of Executive Order 14 (2018) in that the regulation helps to protect the health, safety, and welfare of individuals receiving services as it provides clarity for individuals, providers, and other stakeholders about the structure for support of assured rights and establishes procedures when these rights are violated or are in dispute. The structure of the regulation is straightforward and succinct and written to provide clarity for providers and individuals receiving services.

There are amendments expected in an action to be brought for promulgation in 2022, to clarify processes and provide stakeholders with information necessary to help assure the rights of individuals receiving services from providers licensed, funded, or operated by the Department of Behavioral Health and Developmental Services. The planned amendments will also identify and amend any incorrect, incomplete, or outdated legal references.

The regulation is needed to carry out the human rights requirements of Chapter 4 of Title 37.2 of the Code of Virginia. One comment was received concerning the regulation. The regulation is straightforward and minimal while meeting requirements for establishing a structure for helping to assure the rights of individuals receiving services. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses. Planned amendments are to make the regulation clearer to understand, which would help providers.

Contact Information: 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.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-190, Regulations for Voluntary Admissions to State Training Centers**, and determined that this regulation should be amended. The department is publishing its report of findings dated February 15, 2022, to support this decision.

This regulation is necessary to carry out the requirements of § 37.2-806 B of the Code of Virginia and meets the requirements of Executive Order 14 (2018) in that the regulation helps to protect the health, safety, and welfare of individuals needing training centers services as the regulation (i) clearly articulates criteria and procedures required to admit a person to an intellectual disability training center; (ii) clearly defines due process protections afforded to persons with intellectual disability who are being admitted to a training center and to their families; and (iii) helps to ensure that training center admission procedures are minimally intrusive for individuals and their families and have the minimum possible cost to training centers.

There are amendments expected in an action to be brought for promulgation in 2022, primarily to add two definitions and have the regulations reflect the current admissions practice since the last update in 2018. Namely, the planned action would add "community resource consultant," and "Critical and Complex Consultation Team" or "C3T."

The regulation is needed to carry out the requirements of § 37.2-806 B of the Code of Virginia. One comment was received concerning the regulation. The regulation is straightforward and minimal while meeting requirements for admission processes. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses.

Contact Information: 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.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-200, Regulations for Emergency and Respite Care Admission to State Training Centers**, and determined that this regulation should

---

# Periodic Reviews and Small Business Impact Reviews

---

be amended. The department is publishing its report of findings dated February 15, 2022, to support this decision.

This regulation is necessary to carry out the requirements of § 37.2-807 of the Code of Virginia and meets the requirements of Executive Order 14 (2018) in that the regulation helps protect the health, safety, and welfare of individuals needing emergency and respite care training centers services as the regulation (i) clearly articulates requirements that must be met to access emergency services and respite care in an intellectual disability training center and (ii) helps to ensure that procedures for obtaining emergency services and respite care in a training center are minimally intrusive for individuals and their families. The structure of the regulation is straightforward and succinct.

There are amendments expected in an action to be brought for promulgation in 2022, primarily to add two definitions and have the regulations reflect the current admissions practice since the last update in 2018. Namely, the planned action would add "community resource consultant," and "Critical and Complex Consultation Team" or "C3T."

The regulation is needed to carry out the requirements of § 37.2-807 of the Code of Virginia. One comment was received concerning the regulation. The regulation is straightforward and minimal while meeting requirements for emergency and respite admission processes. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses.

Contact Information: 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.

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-210, Regulations to Govern Temporary Leave from State Facilities**, and determined that this regulation should be amended. The department is publishing its report of findings dated February 15, 2022, to support this decision.

This regulation is necessary to carry out the requirements of § 37.2-837 of the Code of Virginia and meets the requirements of Executive Order 14 (2018) in that the regulation helps to protect the health, safety, and welfare of individuals needing state facility services as the regulation clearly articulates the general process and requirements related to temporary leave

from state facilities. The regulation establishes the conditions for granting leave and includes provisions to ensure accountability and appropriate care for persons who are on leave status.

There are amendments expected in an action to be brought for promulgation in 2022, including clarifications around the role of authorized representatives.

The regulation is needed to carry out the requirements of § 37.2-837 of the Code of Virginia. One comment was received concerning the regulation. The regulation is straightforward and minimal while establishing requirements for leave from state facilities. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses.

Contact Information: 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.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy conducted a periodic review and a small business impact review of **18VAC110-40, Regulations Governing Collaborative Practice Agreements**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated February 10, 2022, to support this decision.

Provisions of 18VAC110-40 were initially effective in January of 2001 to implement legislation passed in 1999. The regulation was amended in 2007 for clarification and adoption of less burdensome requirements and was amended again in 2014 and 2020 to incorporate changes in the enabling legislation. The regulation continues to be effective in protecting the public by setting rules for agreements between pharmacists and practitioners to ensure prescribing and dispensing of drugs to patients are efficacious. Whenever amendments are promulgated, language is reviewed to ensure that it is clearly written and easily understandable.



---

## Periodic Reviews and Small Business Impact Reviews

---

The board has recommended that the regulation be retained without amendments at this time.

There is a continued need for the regulation since § 54.1-3300.1 of the Code of Virginia provides: "The Boards of Medicine and Pharmacy shall jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists. The regulations shall include guidelines concerning the use of protocols, and a procedure to allow for the approval or disapproval of specific protocols by the Boards of Medicine and Pharmacy if review is requested by a practitioner or pharmacist." Such regulation can only occur through the continuation of 18VAC110-40.

The board has not received any of complaints or comments concerning the regulation. Practitioners do not find the regulation to be overly complex, but the board is always open to comment on whether requirements could be simplified or clarified. There is no overlap, duplication, or conflict with federal or state law or regulation. The board has continually updated regulations while protecting the safety, integrity, and efficacy of dispensing medications.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy conducted a periodic review and a small business impact review of **18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, Third-Party Logistics Providers, and Warehouseers**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated February 10, 2022, to support this decision.

In 2006, it was determined that Regulations Governing the Practice of Pharmacy (18VAC110-20) had become so extensive and complex that the board proposed the adoption of a new chapter, 18VAC110-50, to incorporate the regulations for wholesale distributors, manufacturers, third-party logistics providers, and warehouseers and to delete requirements for those entities in 18VAC110-20.

The regulation has been amended 12 times since 2006 to clarify provisions, add protections against counterfeiting of drugs in the wholesale market, and regulate third party logistic providers as mandated by the Code of Virginia. Whenever amendments are promulgated, language is reviewed to ensure that it is clearly written and easily understandable.

The board has recommended that the regulation be retained without amendments at this time.

There is a continued need for the regulation as the Code of Virginia requires these facilities to be regulated and for the board to promulgate such regulations relating to the storage, handling, and distribution of prescription drugs as necessary to prevent diversion of prescription drugs, and to protect the public. Such regulation can only occur through the continuation of 18VAC110-50.

The board has not received any complaints or comments concerning the regulation. Facilities regulated by 18VAC110-50 do not find the regulation to be overly complex, but the board is always open to comment on whether requirements could be simplified or clarified. There is no overlap, duplication, or conflict with federal or state law or regulation. Manufacturers are required to follow the federal rule, Good Manufacturing Practice for Finished Pharmaceuticals regulations set forth in 21 CFR Part 211. The board has continually updated regulations while protecting the safety, integrity, and efficacy of dispensing medications.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

---

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-141, Licensing Standards for Independent Foster Homes**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated February 16, 2022, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018), as amended. The regulation is necessary for the protection of public health, safety, and welfare of children receiving care, maintenance, protection, and guidance by an independent foster home.

The State Board of Social Services recommends that this regulation remain in effect without change, as there have been no changes to the law on which it is based. There are no licensed independent foster home providers in the state.

The regulation is necessary for the protection of public health, safety, and welfare of the children placed in independent foster homes. No public comments were received. The regulation is concise and understandable. The regulation does not overlap or duplicate any other federal or state law. While this regulation has not been amended recently, there are no licensed providers that use this regulation and no changes are needed. This

---

## Periodic Reviews and Small Business Impact Reviews

---

regulation has no impact on existing or potential Virginia employers' ability to maintain and increase the number of jobs in the Commonwealth. The regulation neither impacts small businesses nor includes limitations or requirements for small businesses. There is no cost to the general public.

Contact Information: Tammy Trestrail, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7132.

---

# REGULATIONS

---

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

---

## Symbol Key

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

---

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-450. Pertaining to the Taking of Bluefish (amending 4VAC20-450-15, 4VAC20-450-30).

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

**Effective Date:** March 1, 2022.

**Agency Contact:** Alexa Galvan, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2069, or email [alexa.galvan@mrc.virginia.gov](mailto:alexa.galvan@mrc.virginia.gov).

#### Summary:

*The amendments change the way "annual quota" for bluefish is established, moving it from being defined in regulation to being pursuant to the Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan.*

#### 4VAC20-450-15. Definitions.

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

~~"Annual quota" means Virginia's 11.8795% share of the annual coastwide commercial bluefish quota managed by the Atlantic States Marine Fisheries Commission.~~

"Bluefish" means any fish of the species *Pomatomus saltatrix*.

"Captain" means the person licensed by the U.S. Coast Guard to carry passengers for hire who operates the charter boat or head boat.

"Charter vessel" or "for-hire vessel" means a vessel operating with a captain who possesses either a Class A Fishing Guide License, Class B Fishing Guide License, or Fishing Guide Reciprocity Permit.

#### 4VAC20-450-30. Commercial landings quota.

A. The commercial landings of bluefish shall be limited to the annual quota pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Bluefish Fishery Management Plan, except as specified in subsection B of this section.

B. If a quota transfer occurs between Virginia and another state participating in the Interstate Fishery Management Plan for bluefish, Virginia's annual quota for the current calendar year shall be limited to the annual quota amount as adjusted for transfers.

C. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close commercial harvest and landings from the bluefish fishery within five days of posting.

D. It shall be unlawful for any person to harvest or land bluefish for commercial purposes after the closure date set forth in the notice described in subsection C of this section.

VA.R. Doc. No. R22-7095; Filed February 22, 2022, 4:44 p.m.

#### Emergency Regulation

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

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

**Effective Dates:** March 1, 2022, through March 31, 2022.

**Agency Contact:** Alexa Galvan, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2069, or email [alexa.galvan@mrc.virginia.gov](mailto:alexa.galvan@mrc.virginia.gov).

#### Preamble:

*The amendment extends the open patent tong season for oyster harvest in the Deep Rock Area to March 15, 2022.*

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

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

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

---

# Regulations

---

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2021, through April 30, 2022 (hand tong only).
2. Milford Haven: December 1, 2021, through February 28, 2022 (hand tong only).
3. Rappahannock River Area 9: October 1, 2021, through December 31, 2021 (hand tong only).
4. Corrotoman Hand Tong Area: October 1, 2021, through December 31, 2021.
5. Little Wicomico River: October 1, 2021, through December 31, 2021 (hand tong only).
6. Nomini Creek Area: October 1, 2021, through January 31, 2022 (hand tong only).
7. Yeocomico River Area: October 1, 2021, through December 31, 2021 (hand tong only).
8. York River Hand Tong Area: October 1, 2021, through February 28, 2022 (hand tong only).
9. York River Rotation Areas 1 and 2: October 1, 2021, through November 30, 2021 (hand tong only).
10. James River Area 1: October 1, 2021, through November 30, 2021, and February 1, 2022, through February 28, 2022 (hand tong only).
11. James River Areas 2 and 3: October 1, 2021, through October 15, 2021, and February 1, 2022, through February 28, 2022 (hand tong only).
12. Pocomoke Sound Area: December 1, 2021, through February 28, 2022 (hand tong only).
13. Mobjack Bay Area: October 1, 2021, through January 31, 2022 (hand tong only).
14. Rappahannock River Rotation Area 3: November 1, 2021, through November 30, 2021, and January 1, 2022, through January 31, 2022 (hand scrape only).
15. Rappahannock River Area 5: December 1, 2021, through December 31, 2021, and February 1, 2022, through February 28, 2022 (hand scrape only).
16. Great Wicomico River Rotation Area 1: December 1, 2021, through January 31, 2022 (hand scrape only).
17. James River Area 1: December 1, 2021, through January 31, 2022 (hand scrape only).
18. James River Areas 2 and 3: October 18, 2021, through January 31, 2022 (hand scrape only).
19. Upper Chesapeake Bay - Blackberry Hangs Area: February 1, 2022, through February 28, 2022 (hand scrape only).
20. Mobjack Bay Area: February 1, 2022, through February 28, 2022 (hand scrape only).

21. Pocomoke Sound Rotation Area 1: December 1, 2021, through February 28, 2022 (dredge only).
22. Tangier Sound Rotation Area 1: December 1, 2021, through February 28, 2022 (dredge only).
23. Deep Rock Area: December 1, 2021, through ~~February 28~~ March 15, 2022 (patent tong only).
24. Upper Chesapeake Bay - Blackberry Hangs Area: October 18, 2021, through October 31, 2021 (patent tong only).
25. Rappahannock River Rotation Area 1: October 18, 2021, through February 14, 2022 (patent tong only).
26. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2021, through March 31, 2022 (by hand and hand tong only).

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

1. James River Seed Area: October 1, 2021, through May 31, 2022 (hand tong only).
2. Deep Water Shoal State Replenishment Seed Area: October 1, 2021, through May 31, 2022 (hand tong only).

VA.R. Doc. No. R22-7100; Filed February 22, 2022, 4:31 p.m.

## Final Regulation

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

**Title of Regulation:** **4VAC20-1150. Pertaining to Charter Boat and Head Boat Fisheries (repealing 4VAC20-1150-10, 4VAC20-1150-20).**

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

**Effective Date:** March 1, 2022.

**Agency Contact:** Alexa Galvan, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2069, or email [alexa.galvan@mrc.virginia.gov](mailto:alexa.galvan@mrc.virginia.gov).

**Summary:**

*The amendments repeal the outdated regulation Pertaining to Charter Boat and Head Boat Fisheries (4VAC20-1150) as it has been replaced with updated provisions incorporated into Pertaining to Fishing Guides (4VAC20-1180).*

VA.R. Doc. No. R22-7097; Filed February 22, 2022, 4:40 p.m.

**Final Regulation**

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

**Title of Regulation:** 4VAC20-1180. Pertaining to Fishing Guides (amending 4VAC20-1180-10 through 4VAC20-1180-50; adding 4VAC20-1180-70, 4VAC20-1180-80; repealing 4VAC20-1180-60).

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

**Effective Date:** March 1, 2022.

**Agency Contact:** Alexa Galvan, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2069, or email [alexa.galvan@mrc.virginia.gov](mailto:alexa.galvan@mrc.virginia.gov).

**Summary:**

*The amendments (i) define the extent of charter license lines between freshwater and saltwater jurisdictions, (ii) clarify how to obtain required for-hire licenses, (iii) establish penalties for failing to comply with regulatory provisions, and (iv) repeal an outdated provision.*

Chapter 1180

Pertaining to Fishing Guides, Charter Boat, and Head Boat Fisheries

**4VAC20-1180-10. Purpose.**

The purpose of this chapter is to establish conditional or limited sale of fishing guide licenses and permits for fishing guides, charter boats, and head boats for effective fishery management. This chapter establishes the enforcement boundaries for freshwater and saltwater licenses for the for-hire industry.

**4VAC20-1180-20. Definitions.**

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

"Captain" means the person licensed by the U.S. Coast Guard to carry passengers for hire who operates the charter boat or head boat.

"Charter boat permit" or "head boat permit" means the permit for the charter boat or head boat that allows the charter boat or head boat passengers to fish.

"Class A fishing guide license" means the license ~~for that~~ allows charter boat or head boat operators ~~that is restricted to those individuals who satisfy one of the conditions described in 4VAC20-1180-40 or who obtains the license through a transfer or from the waiting list described in 4VAC20-1180-50 and 4VAC20-1180-60, respectively to fish in Virginia and apply for reciprocity in Maryland.~~

"Class B fishing guide license" means the license that allows charter boat or head boat operators to fish only in Virginia waters ~~and may be obtained by anyone who is licensed by the U.S. Coast Guard to carry passengers for hire and can provide a copy of his current U.S. Coast Guard license with the application.~~

"Fishing guide reciprocity permit" means a cost-free permit that is required for any charter boat or head boat operator licensed as a Maryland fishing guide who fishes in Virginia waters under the Chesapeake Bay Saltwater License Reciprocity Agreement.

**4VAC20-1180-30. Fishing guide license, fees and charter boat and head boat permit.**

A. Either a Class A fishing guide license or Class B fishing guide license or a fishing guide reciprocity permit shall be required for a charter boat or head boat captain operating for hire ~~and fishing~~ in the ~~tidal salt~~ waters of the Commonwealth under the jurisdiction of the ~~commission~~ Marine Resources Commission, pursuant to 4VAC20-1180-70.

~~B. The annual fee for the Class A fishing guide license or the Class B fishing guide license shall be \$100 for a resident and \$200 for a nonresident. Fishing~~

~~B. A charter boat or head boat permit or a fishing guide reciprocity permit shall be required for any registered or documented charter boat or head boat operating for hire in the waters of the Commonwealth under the jurisdiction of the Marine Resources Commission, pursuant to 4VAC20-1180-70.~~

~~C. A fishing guide reciprocity permits permit can be obtained at no cost provided the applicant furnishes copies of his the applicant's Maryland fishing guide license and U.S. Coast Guard license, and vessel documentation or registration.~~

~~C. When the same applicant purchases a Class A or Class B fishing guide license prior to purchasing one charter boat or head boat license as required by § 28.2-302.8 of the Code of Virginia, the fee for that charter boat or head boat license shall be reduced by the cost of the fishing guide license.~~

**4VAC20-1180-40. Limited sale of the Class A fishing guide license and conditional sale of the Class B fishing guide license.**

~~The commissioner has determined that the requirements for the fishing guide license in Maryland are substantially similar and reciprocal with the Class A fishing guide license, and the following provisions and qualifications shall define the administration of the Class A fishing guide license:~~

- ~~1. It shall be unlawful for any person to serve as the captain of a charter boat or head boat without first qualifying for and obtaining a Class A or Class B fishing guide license or a fishing guide reciprocity permit.~~

---

# Regulations

---

~~2. An applicant shall be considered qualified for the Class A fishing guide license once that applicant satisfies the following conditions:~~

~~a. The applicant shall be licensed by the U.S. Coast Guard to carry passengers for hire and shall include a copy of his current U.S. Coast Guard license with the application.~~

~~b. The applicant shall have purchased, as the licensee, a 2008 Virginia charter boat or head boat license before June 25, 2008, or shall have purchased, as the licensee, Virginia charter boat or head boat licenses in 2006 and 2007.~~

A. To obtain a Class A guide license the applicant shall submit to the Marine Resources Commission a For-Hire Application and a copy of the applicant's valid U.S. Coast Guard license.

~~3. 1. A Class A fishing guide licensee shall be required to purchase a Class A fishing guide license annually to maintain his eligibility to purchase a Class A fishing guide license for the following year. If a Class A fishing guide license is not purchased annually, then the applicant shall reapply using a New Class A Fishing Guide License Applicant Form.~~

~~4. 2. The number of Class A fishing guide licenses sold in any one year shall not exceed 240 for residents of Virginia and 38 for nonresidents, which are the numbers of persons meeting the qualifications specified in subdivision 2 b of this section.~~

~~3. If the number of applicants exceeds the number of available licenses in any calendar year, those applicants shall be placed on a wait list. If there are any vacant licenses due to loss of eligibility, those licenses shall be filled by persons from the wait list in the order of listing. If the person from the wait list fails to purchase the Class A fishing guide license within 14 days, the applicant forfeits eligibility for the current calendar year, and the next person shall be selected from the wait list.~~

B. To obtain a Class B guide license the applicant shall submit to the Marine Resources Commission a For-Hire Application and a copy of the applicant's valid U.S. Coast Guard license.

~~5. An applicant shall be considered qualified for the Class B fishing guide license once he provides documentation that he is licensed by the U.S. Coast Guard to carry passengers for hire and can provide a copy of his current U.S. Coast Guard license with the application.~~

## **4VAC20-1180-50. Transfers of a Class A fishing guide license.**

A. A Class A fishing guide license may be transferred from the current licensee to another person with the approval of the commissioner. Transfers may be temporary or permanent. A temporary transfer shall authorize the person replacing the original Class A fishing guide licensee to serve as a fishing

guide from the date of the transfer to the end of the license year, and following that time period, the original Class A fishing guide licensee shall retain eligibility for a fishing guide license. A permanent transfer authorizes the person replacing the original licensee to serve as a fishing guide for as long as he continues to qualify for the license, and the original licensee shall lose his eligibility for a Class A fishing guide license in future years. Commissioner of Marine Resources as follows:

1. A temporary transfer shall authorize the person replacing the original Class A fishing guide licensee to serve as a fishing guide from the date of the transfer to the end of the calendar year, and following that time period, the original Class A fishing guide licensee shall retain eligibility for a fishing guide license.

2. A permanent transfer authorizes the person replacing the original licensee to serve as a fishing guide for as long as they continue to qualify for the license, and the original licensee shall lose eligibility for a Class A fishing guide license in future years.

B. No transfer of a Class A fishing guide license from a resident to a nonresident or nonresident to resident shall be approved.

## **4VAC20-1180-60. Waiting list. (Repealed.)**

~~A. Effective January 1, 2009, the commission shall create a list of applicants who have failed to qualify for the Class A fishing guide license. Persons may be placed upon the list in the order of receipt of their application, except that any person who cannot document that he is currently licensed by the U.S. Coast Guard to carry passengers for hire shall not be placed on the waiting list.~~

~~B. In the event the number of Class A fishing guide licenses in any year is less than the maximum number of licenses authorized by subdivision 4 of 4VAC20-1180-40, the vacant licenses may be filled by persons from the waiting list in their order of listing.~~

## **4VAC20-1180-70. Delineation of enforcement boundaries for freshwater and saltwater licenses.**

It shall be unlawful to operate as a captain on a charter or head boat without the corresponding licenses from the Marine Resources Commission in the following waters:

1. Potomac River: the tidal portions of all Virginia tributaries entering downstream of the Route 301 Bridge;

2. Rappahannock River: the mainstem and all tributaries of the Rappahannock River downstream of the Route 360 Bridge;

3. Piankatank River: the mainstem and all tributaries of the Piankatank River downstream of the first set of power lines immediately upriver of Anderson Point;

4. York River (including the Mattaponi and the Pamunkey Rivers): the mainstem and all tributaries of the York River downstream of the abutments of the old Route 33 Bridges; and

5. James River: the mainstem and all tributaries of the James River downstream of a line connecting Hog Point and the downstream shoreline at the mouth of College Creek.

#### **4VAC20-1180-80. Penalty.**

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

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

#### **FORMS (4VAC20-1180)**

[For Hire New Applicant or Renewal Form \(eff. 1/2022\)](#)

[New Class A Fishing Guide License Applicant Form \(filed 2/22/2022\)](#)

VA.R. Doc. No. R22-7098; Filed February 22, 2022, 5:03 p.m.

### **Final Regulation**

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

**Title of Regulation:** **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-30, 4VAC20-1270-35, 4VAC20-1270-50).**

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

**Effective Date:** March 1, 2022.

**Agency Contact:** Alexa Galvan, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2069, or email [alexa.galvan@mrc.virginia.gov](mailto:alexa.galvan@mrc.virginia.gov).

#### **Summary:**

*The amendments (i) align regulation with the Interstate Fishery Management Plan for Atlantic Menhaden by lowering total allowable commercial landings and non-purse seine menhaden bait sector quota allocation, and (ii) remove an obsolete date.*

#### **4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, and state-to-state transfers.**

A. Total allowable commercial landings for menhaden in ~~2021~~ 2022 shall be equivalent to ~~335,206,390~~ 334,781,533 pounds (~~152,047.06 metric tons~~) or 78.66% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission.

B. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivisions 1, 2, and 3 of this subsection.

1. The purse seine menhaden reduction sector shall be allocated a quota of ~~301,819,834~~ 301,437,292 pounds or 90.04% of allowable commercial menhaden landings.

2. The purse seine menhaden bait sector shall be allocated a quota of ~~28,090,295~~ 28,054,692 pounds or 8.38% of allowable commercial menhaden landings.

3. The non-purse seine menhaden bait sector shall be allocated a quota of ~~5,296,261~~ 5,289,548 pounds or 1.58% of allowable commercial menhaden landings.

C. If the total allowable commercial landings specified in subsection A of this section are exceeded in any calendar year, the total allowable commercial landings for the subsequent calendar year shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in subsection B of this section, with the exception of the non-purse seine menhaden bait sector, which shall move into the incidental catch provision outlined in subdivision F 3 of this section.

D. Any portion of the 1.0% of the coastwide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coastwide total allowable catch to Virginia shall increase the total allowable commercial landings for that year.

E. It shall be unlawful for any person to take or catch menhaden using a purse seine net except in accordance with the seasons, areas, and gear restrictions as set forth in §§ 28.2-409 and 28.2-410 of the Code of Virginia.

F. It shall be unlawful to harvest or land in Virginia any menhaden after the commissioner projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4VAC20-1270-60 have been

---

# Regulations

---

received, the portion of the total allowable catch has not been harvested by that sector.

1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.
2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.
3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the Atlantic States Marine Fisheries Commission incidental catch provision.

G. The commissioner may request a transfer of menhaden quota from any other state that is a member of the Atlantic States Marine Fisheries Commission. If Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable commercial landings for that calendar year shall increase by the amount of transferred quota. It shall be unlawful for this quota transfer to be applied to the Bay Cap quota as described in 4VAC20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota at the end of the calendar year.

#### **4VAC20-1270-35. Chesapeake Bay purse seine menhaden reduction fishery.**

A. The annual total allowable Bay Cap landings from the Chesapeake Bay by the purse seine menhaden reduction sector ~~in 2021~~ shall not exceed 51,000 metric tons (112,435,754 pounds) and shall be subject to annual adjustment for any overages as specified in subdivision 3 of this subsection.

1. It shall be unlawful for any transfers of quota from other states to be applied to the Bay Cap to reduce any overages.
2. It shall be unlawful for any amount of unlanded menhaden quota under the Bay Cap each calendar year to be rolled over or applied as credit for any subsequent calendar years.
3. Any annual menhaden landings in excess of the current calendar year Bay Cap shall be deducted from only the subsequent calendar year Bay Cap.

B. When it is projected that the purse seine menhaden reduction sector has met the annual menhaden Bay Cap in the Chesapeake Bay, based on mandatory daily landings reports, the commissioner shall promptly notify the industry announcing the date of closure.

C. It shall be unlawful for any person to harvest menhaden by purse seine for reduction purposes from the Chesapeake Bay for the remainder of that calendar year after the commissioner has announced the date of closure.

#### **4VAC20-1270-50. Non-purse seine menhaden bait sector quota allocation.**

The non-purse seine menhaden bait sector's quota allocation shall be in proportion to share for each gear type of average landings from 2002 through 2011 and are as follows:

1. Cast net: 0.04% or ~~2,119~~ 2,116 pounds.
2. Dredge: 0.06% or ~~3,178~~ 3,174 pounds.
3. Fyke net: 0.04% or ~~2,119~~ 2,116 pounds.
4. Gill net: 30.31% or ~~1,605,297~~ 1,603,262 pounds.
5. Pound net: 67.98% or ~~3,600,398~~ 3,595,835 pounds.
6. Haul seine: 0.4% or ~~21,185~~ 21,158 pounds.
7. Trawl: 1.17% or ~~61,966~~ 61,888 pounds.

VA.R. Doc. No. R22-7096; Filed February 22, 2022; 4:42 p.m.

---

## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### BOARD OF HISTORIC RESOURCES

#### Fast-Track Regulation

Title of Regulation: **17VAC5-40. Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans (adding 17VAC5-40-10 through 17VAC5-40-50).**

Statutory Authority: § 10.1-2204 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 13, 2022.

Effective Date: April 29, 2022.

Agency Contact: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, or email [stephanie.williams@dhr.virginia.gov](mailto:stephanie.williams@dhr.virginia.gov).

Basis: The Director of the Department of Historic Resources is granted the authority pursuant to § 10.1-2202 of the Code of Virginia to promulgate regulations. Enactment Clause 4 of Chapters 1100 and 1101 of the 2020 Acts of Assembly require the Board of Historical Resources to promulgate regulations to govern the manner in which any monument or memorial may be contextualized.



**Purpose:** This action is essential to protect the health, safety, or welfare of citizens in order to provide localities and the leaders and citizens of those localities with rules on interpreting certain war monuments and memorials in relation to contextualizing certain war monuments or memorials if a locality chooses. Currently no rules for localities that choose to contextualize certain war monuments or memorials exist, and this regulation cures that.

**Rationale for Using Fast-Track Rulemaking Process:** This rulemaking is expected to be noncontroversial as contextualization is voluntary for local governing bodies, and the General Assembly has required the board to guide those local governing bodies in this process.

**Substance:** This regulation provides rules to local governing bodies that choose to contextualize certain war monument or memorials within their jurisdiction. These rules includes general provisions regarding the markers, including their appearance, location, and ownership and the application requirements and approval process.

**Issues:** The primary advantage to the public is that the public will know the process that localities must undergo in order to contextualize certain monuments or memorials. There are no disadvantages to the public. The primary advantage to the Commonwealth is that contextualization of certain monuments or memorials will be done in a uniform fashion. There are no disadvantages to the Commonwealth. The primary advantage to all is that the information on the marker will be vetted by historians at the department and only credible, documented facts will be a part of the contextualization.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. Pursuant to a legislative mandate, the Board of Historic Resources (Board) proposes to create a new regulation governing the contextualization of war monuments and memorials. The proposed chapter, 17VAC5-40, Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans, would define relevant terms and describe the requirements for localities to obtain Board approval for a contextualizing marker.<sup>2</sup> The new regulation would include a form for localities to use when submitting an application to the Department of Historic Resources (DHR).

Background. Chapter 1100 and 1101 of the 2020 Acts of Assembly permits localities to remove, relocate, contextualize, or cover publicly owned war-related monuments or memorials on the locality's public property, except for those located in publicly owned cemeteries.<sup>3</sup> The legislation specifically directs the Board to "promulgate regulations governing the

manner in which any monument or memorial may be contextualized pursuant to the provisions of this act." Accordingly, the new regulation defines "monument" or "memorial" to mean "any object erected on a locality's public property pursuant to § 15.2-1812 of the Code of Virginia, intended to commemorate the veterans of any war or conflict, or any engagement of such war or conflict, to include the following: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). "Monument" or "memorial" includes both the object and the pedestal on which it is placed. "Monument or Memorial" does not include any monument or memorial located in a publicly owned cemetery."

DHR reports that Virginia has 423 Civil War monuments (both Union and Confederate) and an additional 274 statues or monuments of various types; of the latter, only those that meet this definition would be subject to the legislation as well as the proposed regulation.

The proposed regulation defines "contextualize" as "the use of facts derived from sources that can be cited to explain the circumstances, influences, and conditions that existed at the time a war memorial or monument was erected, and which resulted in its erection." Accordingly, the proposed regulation would require that the text on a marker include (i) a description of the circumstances, influences and conditions that existed at the time the monument or memorial was erected, (ii) an explanation of the documented motivation for the monument's or memorial's creation, (iii) the parties involved in the creation of the monument or memorial and what their motivations were, and (iv) the parties excluded from the process of creating the monument or memorial.<sup>4</sup> In addition, the design of the marker would have to be distinct from state historical markers and would have to identify the governing body (i.e., the locality) or its agent that funded the production and erection of the marker.

Local governments that elect to contextualize a monument or memorial with a marker would be required to submit an application form to DHR.<sup>5</sup> The proposed regulation specifies that DHR shall process up to five applications for contextualization per quarter, on a first-come, first-served basis. DHR may review the application for completeness and accuracy before presenting it to the Board. The Board shall evaluate the applications and approve them based on the following considerations: (i) whether the proposed marker contains true and correct text, (ii) whether the proposed text provides a complete and accurate historical context, (iii) the quality and validity of the documented sources and the documented research provided, (iv) whether the proposed design is sufficiently distinct from state historical markers, and (v) the appropriateness of the proposed location of the marker.

---

# Regulations

---

In addition to new markers, any changes to an existing marker would also have to be approved by the Board. However, the local government could choose to remove a previously erected marker. The proposed regulation would not allow local governments to apply for more than one marker at a specific site. The local government would bear all the costs relating to the design, production, and installation of the marker.

**Estimated Benefits and Costs.** Since the proposed regulation does not mandate any action, and allows actions that were not previously permitted, any costs that arise would be solely at the discretion of local governments. Local governments would be responsible for any costs associated with the production and installation of the markers, if they elect to do so. DHR estimates these costs to range from \$500 to \$1,500 per marker. The new regulation would satisfy the legislative mandate and benefit local governments that seek to contextualize monuments via markers by providing them with a process to do so. In localities where the removal or relocation of certain monuments may be politically untenable for the local government, the option of erecting a marker to contextualize the monument may benefit the government officials and the public by offering a viable compromise. Having a marker that accurately describes the historical context would provide a public education benefit, for residents of the locality as well as visitors.

**Businesses and Other Entities Affected.** The proposed amendments do not directly impact businesses in general. If a local government receives approval for a marker and contracts with a local business to fabricate and/or install the marker, that business would benefit from the promulgation of this regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An 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. As noted above, the proposed regulation does not create any costs. Thus, an adverse impact is not indicated.

**Small Businesses<sup>7</sup> Affected.<sup>8</sup>** The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>9</sup> Affected.<sup>10</sup>** The proposed amendments would only impact localities where the local government decided to erect a marker to contextualize a monument. In that case, the local government would need to allocate or raise funds to cover the cost of designing, fabricating, and installing the marker. However, the proposed regulation does not create new costs for local governments in general. Therefore, an adverse impact for local governments is not indicated.

**Projected Impact on Employment.** The proposed regulation would not affect total employment.

**Effects on the Use and Value of Private Property.** The proposed regulation does not directly affect the use or value of private property. Real estate development costs are also unaffected.

---

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>A marker could be a plaque, signboard, or other form of signage located near the monument.

<sup>3</sup>See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch1100>. Chapter 1101 is identical. Both chapters overturned an 1890 Act of Assembly that made it unlawful to disturb or interfere with such monuments. Under the new law, local governments may remove, relocate, contextualize, or cover a monument, provided they publish a notice of intent in a local newspaper and conduct a public hearing. The legislation contains specific requirements for the publication of the notice and the hearing, as well as requirements for local governments that vote to remove or relocate a monument or memorial. Thus, adding a marker to contextualize the monument is one option among many, and local governments are not legally mandated to exercise any of these options.

<sup>4</sup>See this marker in DeKalb County, Georgia, that contextualizes the 1908 Confederate monument in Decatur Square, for an example provided by DHR: <https://www.ajc.com/news/local/marker-supplies-historical-context-for-dekalb-confederate-monument/3mGyZ6ITzCEGVgz785O1zJ/>.

<sup>5</sup>See [https://ris.dls.virginia.gov/uploads/17VAC5/forms/Application\\_to\\_Propose\\_Contextualization\\_DRAFT-20210810114954.docx](https://ris.dls.virginia.gov/uploads/17VAC5/forms/Application_to_Propose_Contextualization_DRAFT-20210810114954.docx).

<sup>6</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>7</sup>Pursuant to § 2.2-4007.04, 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>8</sup>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>9</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>10</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Department of Historic Resources on behalf of the Board of Historic Resources concurs with the economic impact analysis.

**Summary:**

*Pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly, the amendments establish Regulations Governing Contextualization of Monuments of Memorials for Certain War Veterans (17VAC5-40), which provides local governing bodies that choose to contextualize certain war monuments or memorials within their jurisdiction requirements for the markers, including (i) the marker's appearance, location, and ownership, (ii) application requirements, and (iii) the application approval process.*

**Chapter 40****Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans****17VAC5-40-10. Definitions.**

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

"Application" means an application for approval of a marker, in a form prescribed by the director and containing the basic information required by 17VAC5-40-40.

"Board" means the Virginia Board of Historic Resources.

"Contextualize" means the use of facts derived from sources that can be cited to explain the circumstances, influences, and conditions that existed at the time a war memorial or monument was erected and resulted in its erection.

"Department" means the Virginia Department of Historic Resources.

"Director" means the Director of the Department.

"Locality's public property" means any property owned by a locality, excluding any publicly owned cemetery.

"Marker" means a marker, plaque, or signage of any kind that contextualizes or purports to contextualize a monument or memorial. A marker is not a monument or memorial.

"Monument" or "memorial" means any object erected on a locality's public property pursuant to § 15.2-1812 of the Code of Virginia, intended to commemorate the veterans of any war or conflict, or any engagement of such war or conflict, to include the following: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Civil War (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000- ), Operation Enduring Freedom (2001- ), and Operation Iraqi Freedom (2003- ). "Monument" or "memorial" includes both the object and the pedestal on which an object is placed. "Monument" or "memorial" does not include any monument or memorial located in a publicly owned cemetery.

**17VAC5-40-20. Applicability.**

This chapter shall apply to any locality that proposes to contextualize any monument or memorial pursuant to § 15.2-1812 of the Code of Virginia.

**17VAC5-40-30. General provisions.**

A. After first fulfilling the requirements set forth in § 15.2-1812 B of the Code of Virginia, any locality proposing to contextualize any monument or memorial shall submit an application to the department and obtain approval of the application from the board.

B. No marker shall be erected or placed on or near a monument or memorial without approval from the board.

C. If a marker is erected without having received approval from the board, then such marker must be removed.

D. If the board has approved a marker and a locality subsequently desires to change that marker, then the locality must submit a new application for such change.

E. Markers shall differ in style and appearance from state historical markers and shall display on the face of the marker prominent notice of the governing body or its agent that funded its production and erection. The text of a marker shall adhere to the formatting guidelines as described in the application.

F. Any marker that is erected shall be the property of the locality.

G. The locality shall be responsible for covering all expenses associated with producing and installing the marker.

H. The name of the locality and the year the marker was created shall appear on the marker.

I. Only one marker per monument or memorial will be approved by the board.

**17VAC5-40-40. Marker approval application.**

A. Subject to the requirements of this chapter, a locality may, at its own expense, erect a marker on or near any monument or memorial located within its boundaries.

B. Prior to erecting such a marker, the locality shall first submit an application to the department and obtain approval from the board of such application.

C. The application shall be in such form as prescribed by the director and shall include the following basic information:

1. Name, address, email address, and phone number of the local government official who will serve as the primary point of contact;
2. Location and description of the monument or memorial for which the marker is proposed;
3. The text of any and all inscriptions that appear on the monument or memorial;

# Regulations

4. A statement indicating when the monument or memorial was erected, who erected it, and who paid for it, if known, accompanied by documents verifying this information;

5. A statement of purpose of the project;

6. The proposed text and location for the marker, which shall include the following information:

a. A description of the circumstances, influences, and conditions that existed at the time the monument or memorial was erected;

b. An explanation of the documented motivation for the monument's or memorial's creation;

c. The parties involved in the process of creating the monument or memorial and what their motivations were; and

d. The parties excluded from the process of creating the monument or memorial;

7. The proposed location for the marker, which location shall (i) be at or close to the monument or memorial being contextualized and (ii) permit the public to safely view the marker;

8. Documentation relevant to the application, including (i) copies of all references and sources used to draft the proposed text of the marker and (ii) photographs of the monument or memorial to be contextualized;

9. The expected timetable for erection or placement of the marker; and

10. The design, appearance, size, and height for the proposed marker.

D. The department shall process up to five applications for contextualization per quarter, on a first-come, first-served basis. Any applications received after the first five will be deferred to the next board cycle. The department shall review the applications for completeness and accuracy. The department, as it deems necessary, may request additional documentation and information from an applicant. The department may deny an application if it is incomplete or otherwise does not include all the documentation or information required by the department. After the department determines that an application is complete and accurate, the department will present the application to the board.

## **17VAC5-40-50. Issuance of approval.**

A. The board shall evaluate applications presented by the department to the board and determine whether to approve such applications. Approval of an application is in the board's sole discretion. In evaluating whether to approve an application, the board may consider, without limitation:

1. Whether the proposed marker contains true and correct text;

2. Whether the proposed text provides a complete and accurate historical context of the monument or memorial;

3. The quality and validity of the documented sources and documented research provided;

4. Whether the proposed design, appearance, size, and height for the marker differs in style and appearance from state historical markers; and

5. The appropriateness of the proposed location of the marker.

B. The actual text, location, design, appearance, size, and height of a marker as erected shall not differ from the text, location, design, appearance, size, and height set forth in the application that has been approved by the board.

C. The board shall not consider any application until the department has determined that such application is complete and accurate and that sufficient documentary evidence has been submitted to establish the authenticity of the proposed text for the project.

**NOTICE:** The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**FORMS (17VAC5-40)**

**[Monument or Memorial Contextualization Approval Application \(eff. 12/2021\)](#)**

VA.R. Doc. No. R22-6919; Filed February 23, 2022, 8:19 a.m.

## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF OPTOMETRY**

#### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 14 of the Code of Virginia, which exempts the Board of Optometry from the Administrative Process Act when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1 of the Code of Virginia.

**Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

**Public Hearing Information:**

March 18, 2022 - 9:05 a.m. - Department of Health Professions, Perimeter Center, Suite 200, 9960 Mayland Drive, Henrico, VA

**Agency Contact:** Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

**Summary:**

*The proposed amendment adds cholinergic agonists to the therapeutic pharmaceutical agent formulary in the category of a topically administered Schedule VI medication.*

**18VAC105-20-47. Therapeutic pharmaceutical agents.**

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III, IV, and VI narcotic and nonnarcotic agents.
2. Topically administered Schedule VI agents:
  - a. Alpha-adrenergic blocking agents;
  - b. Alpha-adrenergic agonists;
  - c. Cholinergic agonists;
  - ~~d.~~ Anesthetic (including esters and amides);
  - ~~e.~~ Anti-allergy (including antihistamines and mast cell stabilizers);
  - ~~f.~~ Anti-fungal;
  - ~~g.~~ Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
  - ~~h.~~ Anti-infective (including antibiotics and antivirals);
  - ~~i.~~ Anti-inflammatory;
  - ~~j.~~ Cycloplegics and mydriatics;
  - ~~k.~~ Decongestants; and
  - ~~l.~~ Immunosuppressive agents.
3. Orally administered Schedule VI agents:
  - a. Aminocaproic acids (including antifibrinolytic agents);
  - b. Anti-allergy (including antihistamines and leukotriene inhibitors);
  - c. Anti-fungal;

- d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
- e. Anti-infective (including antibiotics and antivirals);
- f. Anti-inflammatory (including steroidal and nonsteroidal);
- g. Decongestants; and
- h. Immunosuppressive agents.

B. Schedules I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances in Schedule II consisting of hydrocodone in combination with acetaminophen and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed, or dispensed.

D. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in subsection C of § 54.1-3408.02. Upon written request, the board may grant a one-time waiver of the requirement for electronic prescribing, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R22-7092; Filed February 11, 2022, 2:51 p.m.

**TITLE 22. SOCIAL SERVICES**

**DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department for Aging and Rehabilitative Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-35).**

**Statutory Authority:** §§ 51.5-131 and 51.5-160 of the Code of Virginia.

**Effective Date:** April 13, 2022.

**Agency Contact:** Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804)

---

# Regulations

---

662-7063, FAX (804) 662-7663, TDD (800) 464-9950, or email [charlotte.arbogast@dars.virginia.gov](mailto:charlotte.arbogast@dars.virginia.gov).

## Summary:

*The amendment updates a citation to the Virginia Residential Landlord and Tenant Act pursuant to Chapter 712 of the 2019 Acts of Assembly, which recodified Title 55 of the Code of Virginia to Title 55.1.*

### **22VAC30-80-35. Basic services in supportive housing settings.**

A. The rate established under the AG for SH, as defined in 22VAC30-80-10, shall cover a residential setting with access to SH services that include:

1. Development of individualized SH service plans;
2. Access to skills training;
3. Assistance with accessing available community-based services and supports;
4. Initial identification and ongoing review of the level of care needs; and
5. Ongoing monitoring of services described in the individual's individualized SH plan.

B. The residential setting covered under the AG for SH, as defined in 22VAC30-80-10, shall be the least restrictive and most integrated setting practicable for the individual and shall:

1. Comply with federal habitability standards;
2. Provide cooking and bathroom facilities in each unit;
3. Afford dignity and privacy to the individual; and
4. Include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (~~§ 55-248.2~~ (§ 55.1-1200 et seq. of the Code of Virginia).

VA.R. Doc. No. R22-7082; Filed February 15, 2022, 4:17 p.m.

## **STATE BOARD OF SOCIAL SERVICES**

### **Action Withdrawn**

**Titles of Regulations:** **22VAC40-191. Background Checks for Child Welfare Agencies (repealing 22VAC40-191-10 through 22VAC40-191-150).**

**22VAC40-192. Background Checks for Child Welfare Agencies (adding 22VAC40-192-10 through 22VAC40-192-210).**

**Statutory Authority:** §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

The State Board of Social Services has WITHDRAWN the regulatory action for **22VAC40-191, Background Checks for Child Welfare Agencies**, and **22VAC40-192, Background Checks for Child Welfare Agencies**, which was published as a Notice of Intended Regulatory Action in [35:14 VA.R. 1840](#)

[March 4, 2019](#). The action addresses standards for, among other entities, child day centers, family day homes, and family day systems. This action is being withdrawn because the State Board of Social Services no longer has authority to promulgate this regulation due to transfer of the regulations and regulatory authority to the State Board of Education pursuant to Chapters 860 and 861 of the 2020 Acts of Assembly. Therefore, this action is withdrawn.

**Agency Contact:** Deborah Eves, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7506, or email [deborah.eves@dss.virginia.gov](mailto:deborah.eves@dss.virginia.gov).

VA.R. Doc. No. R19-5557; Filed February 17, 2022, 10:51 a.m.



## **TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

### **COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM**

#### **Proposed Regulation**

**Title of Regulation:** **24VAC35-20. Policy and Procedure Manual (repealing 24VAC35-20-10 through 24VAC35-20-500).**

**Statutory Authority:** §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 13, 2022.

**Agency Contact:** Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email [richard.foy@vasap.virginia.gov](mailto:richard.foy@vasap.virginia.gov).

**Basis:** The Commission on the Virginia Alcohol Safety Action Program (VASAP) is empowered by § 18.2-271.2 of the Code of Virginia to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.

**Purpose:** The Commission on VASAP's mission is to prevent driving under the influence of alcohol and other drugs, thereby contributing to public safety by preventing traffic fatalities, injuries, and property damage. The regulation under consideration was written many years ago to guide local Alcohol Safety Action Programs (ASAPs) in accomplishing this mission. Since that time much has changed. The regulation no longer reflects the correct organizational structure, best

practices, or current policy and procedure. Repealing the existing regulation, using guidance documents instead, enables the Commission on VASAP to be flexible in a timely manner when implementing updated policy and procedures as new evidence based practices are recommended and the mandates of the courts change. New guidance documents enable VASAP to be more efficient and effective in guarding the public from the potential dangers presented by impaired motorists.

Substance: The entire regulation is being repealed.

Issues: Using operational guidelines instead of regulations gives VASAP the flexibility to modify policy and procedures in timely response to meet the needs of the public, direction of the courts, and changes to the laws of the Commonwealth. The operational guidelines are mostly internal agency procedures; however, they will be available for public viewing. There are no anticipated disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to repeal 24VAC35-20 Policy and Procedure Manual.

Background. The Alcohol Safety Action Program (ASAP) is a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. The ASAP system is composed of 24 local programs that provide services throughout the Commonwealth.<sup>2</sup> Local ASAPs receive referrals from local courts or the commission and then deliver intervention services within locally-administered programs to specific municipal jurisdictions within Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

The regulation has not been updated since 1991 and no longer reflects current practice. The 24 local ASAP programs have been following operational guidelines issued by the executive director of the Commission on VASAP for many years. The current policy and procedure can be found as a guidance document on Town Hall, which was last updated in July, 2021.<sup>3</sup>

Estimated Benefits and Costs. Repealing the regulation would have no practical effect on the local ASAPs since they have already been following operational guidelines issued by the Commission on VASAP. Local ASAPs are established by the Commission and must be recertified every three years. Thus removing the policy and procedures from the Virginia Administrative Code and replacing them with guidance documents would not change the scope of the local programs'

legal responsibilities, the incentives they face to provide services as directed by local courts, or the costs and benefits that arise from the performance of these duties.

Businesses and Other Entities Affected. Repealing the regulation would not affect businesses or other entities besides the ASAPs, which are already aware of the action and the current requirements as contained in the guidance document.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An 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. As noted, repealing the regulation would not create any costs or benefits. Thus, an adverse impact is not indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendment does not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendment would not affect any localities.

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

Effects on the Use and Value of Private Property. The proposed amendment would not affect the value of any private property or real estate development costs.

---

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>See <https://vasap.virginia.gov/>.

<sup>3</sup>See [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\413\GDoc\\_VASAP\\_6761\\_v5.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\413\GDoc_VASAP_6761_v5.pdf)

<sup>4</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup>Pursuant to § 2.2-4007.04, 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>If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-

---

# Regulations

---

4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</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>8</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

Summary:

*The proposed action repeals Policy and Procedure Manual (24VAC35-20) because the regulation no longer reflects current agency policy and procedures.*

V.A.R. Doc. No. R22-6991; Filed February 15, 2022, 10:39 a.m.

## Proposed Regulation

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual (repealing 24VAC35-30-10 through 24VAC35-30-160).**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 13, 2022.

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email [richard.foy@vasap.virginia.gov](mailto:richard.foy@vasap.virginia.gov).

Basis: The Commission on the Virginia Alcohol Safety Action Program (VASAP) is empowered by § 18.2-271.2 of the Code of Virginia to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.

Purpose: The Commission on VASAP's mission is to prevent driving under the influence of alcohol and other drugs, thereby contributing to public safety by preventing traffic fatalities, injuries, and property damage. The regulation under consideration was written many years ago to guide local Alcohol Safety Action Programs (ASAPs) in accomplishing this mission. Since that time much has changed. The regulation no longer reflects the correct organizational structure, best practices, or current policy and procedure. Repealing the existing regulation, using guidance documents instead, enables the Commission on VASAP to be flexible in a timely manner when implementing updated policy and procedures as new evidence based practices are recommended and the mandates of the courts change. New guidance documents enable VASAP

to be more efficient and effective in guarding the public from the potential dangers presented by impaired motorists.

Substance: The entire regulation is being repealed.

Issues: Using operational guidelines instead of regulations gives VASAP the flexibility to modify policy and procedures in timely response to meet the needs of the public, direction of the courts, and changes to the laws of the Commonwealth. The operational guidelines are mostly internal agency procedures; however, they will be available for public viewing. There are no anticipated disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to repeal 24VAC35-30 VASAP Case Management Policy and Procedure Manual.

Background. The Alcohol Safety Action Program (ASAP) is a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. The ASAP system is composed of 24 local programs that provide services throughout the Commonwealth.<sup>2</sup> Local ASAPs receive referrals from local courts or the commission and then deliver intervention services within locally-administered programs to specific municipal jurisdictions within Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

The regulation has not been updated since 1991 and no longer reflects current practice. The 24 local ASAP programs have been following case management operational guidelines issued by the executive director of the Commission on VASAP for many years. The current case management operational guidelines can be found as a guidance document on Town Hall, which was last updated in January, 2022.<sup>3</sup>

Estimated Benefits and Costs. Repealing 24VAC35-30 would have no practical effect on the local ASAPs since they have already been following operational guidelines issued by the Commission on VASAP. Local ASAPs are established by the Commission and must be recertified every three years. Thus removing the policy and procedures from the Virginia Administrative Code and replacing them with guidance documents would not change the scope of the local programs' legal responsibilities, the incentives they face to provide services as directed by local courts, or the costs and benefits that arise from the performance of these duties.

Businesses and Other Entities Affected. Repealing the regulation would not affect businesses or other entities besides



the ASAPs, who are already aware of the action and the current requirements as contained in the guidance document.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An 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. As noted, repealing the regulation would not create any costs or benefits. Thus, an adverse impact is not indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendment does not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendment would not affect any localities.

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

Effects on the Use and Value of Private Property. The proposed amendment would not affect the value of any private property or real estate development costs.

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>See <https://vasap.virginia.gov/>.

<sup>3</sup>See [https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\413\GDoc\\_VASAP\\_6762\\_v4.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\413\GDoc_VASAP_6762_v4.pdf).

<sup>4</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup>Pursuant to § 2.2-4007.04, 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>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</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>8</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

**Summary:**

*The proposed action repeals VASAP Case Management Policy and Procedure Manual (24VAC35-30) because the regulation no longer reflects current agency policy and procedures.*

VA.R. Doc. No. R22-6992; Filed February 15, 2022, 10:40 a.m.

**Proposed Regulation**

**Title of Regulation:** 24VAC35-40. **Certification Requirements Manual (repealing 24VAC35-40-10 through 24VAC35-40-70).**

**Statutory Authority:** §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** May 13, 2022.

**Agency Contact:** Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email [richard.foy@vasap.virginia.gov](mailto:richard.foy@vasap.virginia.gov).

**Basis:** The Commission on the Virginia Alcohol Safety Action Program (VASAP) is empowered by § 18.2-271.2 of the Code of Virginia to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.

**Purpose:** The Commission on VASAP's mission is to prevent driving under the influence of alcohol and other drugs, thereby contributing to public safety by preventing traffic fatalities, injuries, and property damage. The regulation under consideration was written many years ago to guide local Alcohol Safety Action Programs (ASAPs) in accomplishing this mission. Since that time much has changed. The regulation no longer reflects the correct organizational structure, best practices, or current policy and procedure. Repealing the existing regulation, using guidance documents instead, enables the Commission on VASAP to be flexible in a timely manner when implementing updated policy and procedures as new evidence based practices are recommended and the mandates of the courts change. New guidance documents enable VASAP to be more efficient and effective in guarding the public from the potential dangers presented by impaired motorists.

**Substance:** The entire regulation is being repealed.

**Issues:** Using operational guidelines instead of regulations gives VASAP the flexibility to modify policy and procedures in timely response to meet the needs of the public, direction of the courts,

---

# Regulations

---

and changes to the laws of the Commonwealth. The operational guidelines are mostly internal agency procedures; however, they will be available for public viewing. There are no anticipated disadvantages to the public.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.<sup>1</sup>

**Summary of the Proposed Amendments to Regulation.** The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to repeal 24 VAC 35-40 Certification Requirements Manual.

**Background.** The Alcohol Safety Action Program (ASAP) is a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. The ASAP system is composed of 24 local programs that provide services throughout the Commonwealth.<sup>2</sup> Local ASAPs receive referrals from local courts or the commission and then deliver intervention services within locally-administered programs to specific municipal jurisdictions within Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

The regulation has not been updated since 1991 and no longer reflects current practice. Certification of local ASAPs occurs every three years. The 24 local ASAP programs have been following certification requirements issued by the executive director of the Commission on VASAP for many years. The certification manual is currently being rewritten, but is expected to be available as a guidance document on Town Hall by the time this action to repeal the regulation becomes effective.<sup>3</sup>

**Estimated Benefits and Costs.** Repealing 24VAC35-40 would have no practical effect on the local ASAPs since they have already been following operational guidelines issued by the Commission on VASAP. Local ASAPs are established by the Commission and must be recertified every three years. Thus removing the policy and procedures from the Virginia Administrative Code and replacing them with guidance documents would not change the scope of the local programs' legal responsibilities, the incentives they face to provide services as directed by local courts, or the costs and benefits that arise from the performance of these duties.

**Businesses and Other Entities Affected.** Repealing the regulation would not affect businesses or other entities besides the ASAPs, who are already aware of the action and the current requirements as contained in the guidance document.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An 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. As noted, repealing the regulation would not create any costs or benefits. Thus, an adverse impact is not indicated.

**Small Businesses<sup>5</sup> Affected.**<sup>6</sup> The proposed amendment does not appear to adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> The proposed amendment would not affect any localities.

**Projected Impact on Employment.** The proposed amendment does not appear to affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendment would not affect the value of any private property or real estate development costs.

---

<sup>1</sup>Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup>See <https://vasap.virginia.gov/>.

<sup>3</sup>Email from the Commission on VASAP to DPB, February 2, 2022.

<sup>4</sup>Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>5</sup>Pursuant to § 2.2-4007.04, 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>If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>7</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>8</sup>Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

## Summary:

*The proposed action repeals Certification Requirements Manual (24VAC35-40) because the regulation no longer reflects current agency policy and procedures related to the certification of local alcohol safety action programs.*

V.A.R. Doc. No. R22-6993; Filed February 15, 2022, 10:42 a.m.

---

# GOVERNOR

---

## EXECUTIVE ORDER NUMBER SIXTEEN (2022)

### **Providing Flexibility to Hospitals, Health Systems, Nursing Homes, Certified Nursing Facilities, Assisted Living Facilities, Emergency Medical Services, and Other Health Care Providers to Combat COVID-19**

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to provide flexibility to hospitals, health systems, nursing homes, assisted living facilities, certified nursing facilities, and other health care providers to combat COVID-19. This order expires March 22, 2022.

#### Importance of the Issue

Over the last two years, Virginia's hospitals, health systems, nursing homes, certified nursing facilities, assisted living facilities, emergency medical services, and other health care providers have been on the frontlines responding to the novel coronavirus (COVID-19) pandemic. The relentless pace of the pandemic has had an innumerable burden on our healthcare system, exacerbating pre-existing workforce shortages and creating new challenges. Our frontline health care workers are tired, facing unprecedented burnout, grappling with their own mental and physical health, but yet, many of them continue to sacrifice time with their loved ones so that they can continue to provide care for their neighbors. Virginia is grateful to these heroes and humbled by their daily service.

Now, the Omicron variant is driving cases due to its highly infectious characteristics bringing both the seven-day average and the total number of hospitalizations across the Commonwealth among their highest points since the pandemic began at 3,742 and 3,673 patients, respectively. The significant increase in hospitalizations, combined with the severe staffing shortages universally experienced across the Commonwealth and nationwide, is placing an unsustainable strain on our healthcare system and health care workforce. To further compound the strain on the system, hospital emergency departments are also overwhelmed due to a variety of factors including inadequate community-based behavioral health services, at-capacity state psychiatric facilities, and unavailability of testing in the community which limits hospitals' ability to transfer behavioral health and other patients to more appropriate care settings, placing further strains on hospital capacity.

Given these challenges, it is critical that the Commonwealth extends to hospitals, health systems, nursing homes, certified nursing facilities, assisted living facilities, emergency medical services, and other health care providers every available flexibility and waiver necessary to ensure that our healthcare system has the resources needed to care for patients and communities. Any and all measures are needed to expand the workforce, meet surge demand, and leverage other tools and technologies to respond to this crisis, provide relief for our

overburdened frontline workers, and ensure their safety and that of their patients.

The General Assembly afforded immunity from certain liability in circumstances such as those presented by the COVID-19 health crisis. Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia provide certain liability protection to all health care providers during a state of emergency. Section 44-146.23 of the Code of Virginia provides certain liability protection to public and private agencies and their employees engaged in emergency services activities, which include medical and health services.

#### Directive

Therefore, on this date, February 20, 2022, I declare that a limited state of emergency exists in the Commonwealth of Virginia due to COVID-19, a communicable disease of public health threat and its impact on the healthcare system and its workforce. The effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). By virtue of the authority vested in me by Article V of the Constitution of Virginia and by § 44-146.17 of the Code, I declare that a limited state of emergency exists in the Commonwealth of Virginia. In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. I authorize for the Commissioner of the Virginia Department of Health, the Commissioner of the Department of Behavioral Health and Developmental Services, the Director for the Department of Medical Assistance Services, the Commissioner of the Virginia Department of Social Services, and the Director of the Department of Health Professions, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state regulation, and enter into contracts as required to implement this order 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.

2. Notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the Code, I further direct the State Health Commissioner, at his discretion, to authorize any general hospital or nursing home licensed or exempt from licensure by the Virginia Department of Health (VDH) to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19, including plans for safely staffing services across the facility. Notwithstanding § 32.1-132 of the Code, I further direct that any beds added by a general hospital or nursing home pursuant to an authorization of the Commissioner under this Order will constitute licensed beds that do not require further approval or the issuance of a new license. Any authorization by the Commissioner to increase bed capacity, and the authority for any resulting increased number of beds,

will expire 30 days after the expiration or rescission of this Order, as it may be further amended. To provide relief on existing bed capacity, and notwithstanding § 32.1 of the Code, I also direct the State Health Commissioner to authorize programs to allow hospitals to offer intensive at-home treatment enabled by digital technologies, multidisciplinary teams, and ancillary services consistent with the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home Program, provided that a hospital has received a waiver from CMS of 42 CFR § 482.23(b)(1) of the Hospital Conditions of Participation.

3. Notwithstanding any contrary provision in Title 54.1 of the Code, in order to relieve the capacity strain on bedside care and support resulting from staffing shortages, a license issued to a health care provider, pharmacist, pharmacy intern, or pharmacy technician by another state, and in good standing with such state, shall be deemed to be an active license or registration issued by the Commonwealth to provide health care or professional services as a health care practitioner of the same type for which such license or registration is issued in another state provided the health care practitioner is engaged by a hospital (or an affiliate of such hospital where both share the same corporate parent), licensed nursing home, certified nursing facility, dialysis facility, the VDH, or a local or district health department for the purpose of assisting that facility with public health and medical and health operations. Hospitals, licensed nursing homes, certified nursing facilities, dialysis facilities, and health departments must submit to the applicable licensing authority each out-of-state health care practitioner's name, license type, state of license, and license identification number within a reasonable time of such health care practitioner providing services at the applicable facility in the Commonwealth.

4. Health care physical or behavioral health providers with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services. Establishment of a relationship with a new patient requires a Virginia license unless pursuant to paragraph 3 of this Order.

5. Physician assistants licensed in Virginia with two or more years of clinical experience may practice in their area of knowledge and expertise and may prescribe without a written or electronic practice agreement.

6. A health care or behavioral health provider may use any non-public facing audio or remote communication product that is available to communicate with patients, provided that such communication product is not inconsistent with the waivers and flexibilities issued by the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services. This exercise of discretion applies to telehealth services provided for both COVID-19 and for other diagnosis and treatment services unrelated to COVID-19.

7. A licensed practical nurse may administer the COVID-19 vaccine without the supervision of a registered nurse or licensed medical practitioner.

8. Licensed health professionals of health systems or hospitals whose scope of practice includes administration of the vaccine and who have administered the COVID-19 vaccine in a health system or hospital setting may administer the COVID-19 vaccine at any point of distribution that is held in collaboration between a health system or hospital and a local health department without undergoing additional training.

9. A local health department may collaborate with a federal health facility, whether civilian or military, for the purpose of COVID-19 vaccine administration. Federal personnel whose scope of practice includes vaccination may serve with the Medical Reserve Corps after a training and skills assessment as required by VDH.

10. The Department of Medical Assistance Services (DMAS) shall suspend pre-admission screening pursuant to § 32.1-330 of the Code. All new nursing home and assisted living facility admissions will be treated as exempted hospital discharges. Community based LTSS screening teams shall be exempt from face-to-face screenings and may screen for nursing home and assisted living facility admissions from a community setting or waiver services using telehealth or telephonic screening.

11. DMAS shall waive requirements pursuant to § 32.1-325(A)(14) of the Code concerning certificates of medical necessity. Any supporting verifiable documentation requirements are waived with respect to replacement of durable medical equipment (DME). DMAS shall also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost, destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.

12. Any health care provider as defined in § 32.1-127.1:03 of the Code, or any other person permitted by law to administer the COVID-19 vaccine, who administers COVID-19 immunizations, shall report to the Virginia Immunization Information System in a manner consistent with the Virginia Immunization Information System Regulations.

13. The number of technicians a pharmacist may supervise shall be increased. No pharmacist shall supervise more than five persons performing the duties of a pharmacy technician at one time. Pharmacy technicians performing COVID-19 administrative tasks will not be counted in the ratio count.

14. Emergency Medical Services (EMS) agencies shall continue to coordinate and work with health care providers to address the overwhelming demands and capacity shortages being experienced by EMS agencies and other first responders. This includes strategies to manage and coordinate pre-hospital care as well as patient discharge and transport.

15. Temporary nurse aides practicing in long term care certified facilities under the federal Public Health Emergency 1135 Waiver may be deemed eligible by the Board of Nursing to take the National Nurse Aide Assessment Program examination upon submission of a completed application, the employer's written verification of competency and employment as a temporary nurse aide, and provided no other grounds exist under Virginia law to deny the application.

16. Copays required under § 32.1-351(C) of the Code for Virginians receiving health insurance through the Family Access to Medical Insurance Security Plan are waived.

17. Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the Code, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This section does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.

18. Requirements under § 2.2-4002.1 of the Code related to the 30-day advance -public notice and comment period are waived as to DMAS only, so that DMAS can issue Medicaid Memos to ensure that health care providers receive immediate information on flexibilities to ensure access to care for Medicaid members.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in effect until March 22, 2022, unless sooner amended or rescinded by further executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 20th day of February, 2022.

/s/ Glenn Youngkin, Governor

---

# GUIDANCE DOCUMENTS

---

## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Policies and Procedures for the Protection of Human Subjects for Virginia Department for Aging and Rehabilitative Services.](#)

Public Comment Deadline: April 13, 2022.

Effective Date: April 14, 2022.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 726-6625, or email [elizabeth.patacca@dars.virginia.gov](mailto:elizabeth.patacca@dars.virginia.gov).

### STATE BOARD OF HEALTH

Title of Document: [Guidance for Medical Use of Radioactive Material.](#)

Public Comment Deadline: April 13, 2022.

Effective Date: April 14, 2022.

Agency Contact: Lea Perlas, Director, Office of Radiological Health, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8170, or email [lea.perlas@vdh.virginia.gov](mailto:lea.perlas@vdh.virginia.gov).

---

# GENERAL NOTICES

---

## STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Proposed Renewal of Variances to Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing a decision on applications for renewal of existing variances to the Human Rights Regulations submitted to the State Human Rights Committee (SHRC). The purpose of the regulation is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of the regulation to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. All variances shall be approved for a specific time period. The decision and reasons for variance are described in this notice.

Purpose of notice: After considering all available information, at its meeting on January 20, 2022, the SHRC voted to approve the applications for variances to the Human Rights Regulations.

A. For DBHDS' Western State Hospital (WSH).

#### Variance to Procedures for Behavioral Treatment Plans:

12VAC35-115-105 H: Providers shall not use seclusion in a behavioral treatment plan.

#### Variance to Procedures for Use of Seclusion, Restraint, and Time Out:

12VAC35-115-110 C 3: Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

Explanation: The variances will allow WSH to place an individual in an environment of seclusion, at the individual's request, and not as related to an emergency, in order to prevent self-injurious harm to the individual and to the staff members responsible for the individual's care.

These variances were approved for a two-year period with annual updates to the SHRC and quarterly updates to the local human rights committee (LHRC).

B. For DBHDS' Commonwealth Center for Children and Adolescents (CCCA).

#### Variance to Procedures for Behavioral Treatment Plans:

12VAC35-115-105 H: Providers shall not use seclusion in a behavioral treatment plan.

Explanation: The variance will allow CCCA to place the individual (youth) in seclusion when different alternatives have been attempted without sustained success in maintaining safe behaviors as part of the behavioral treatment plan.

The variances were approved for a one-year period with quarterly updates to the LHRC and notice to the SHRC if the individual (youth) is discharged before the variance expires.

C. For Youth for Tomorrow New Life Center Inc.

#### Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8 (generally granting an individual the right to communicate privately with anyone via telephone and to have or refuse visitors, unless certain listed exceptions are met).

Explanation: In order to maintain the safety and security of individuals (youth), the program may restrict communication via telephone and in person visitation to only those names placed on a list generated by the parent or legal guardian and the resident.

These variances will allow Youth for Tomorrow New Life Center Inc. to utilize an approved contact list for phone calls and an approved contact list for visitation for each individual. The lists shall be developed by the individual's parent or legal guardian in order to protect the best interests of the individual. The individual shall be present and given the opportunity to participate with the parent or legal guardian in creating the phone and visitation lists.

These variances were approved for a three-year period with quarterly updates to the LHRC and annual updates to the SHRC.

Contact Information: Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (833) 734-1241, or email [taneika.goldman@dbhds.virginia.gov](mailto:taneika.goldman@dbhds.virginia.gov).

---

# General Notices

---

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Intent to Amend the Virginia State Plan for Medical Assistance - Alternative Benefit Plan Changes

Pursuant to 42 CFR 440.386, the Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to seek approval from the Centers for Medicare and Medicaid Services (CMS) of a state plan amendment (SPA) to modify two Alternative Benefit Plans (ABP) authorized under § 1937 of the Social Security Act (42 USC § 1396a). The first ABP relates to individuals aged 19 to 64 years who are eligible for Medicaid pursuant to § 1902(a)(10)(A)(i)(VIII) of the Social Security Act. The second ABP relates to Medicaid Works, a work incentive opportunity for individuals with disabilities.

The state plan is being revised to include reimbursement for coverage for routine patient costs furnished in connection with a member's participation in a qualifying clinical trial in accordance with the CMS State Medicaid Director (SMD) letter #21-005. Per the SMD letter, DMAS will cover any item or service provided to the individual under the qualifying clinical trial, including any item or service provided to prevent, diagnose, monitor, or treat complications resulting from participation in the qualifying clinical trial, to the extent that the provision of such items or services to the beneficiary would otherwise be covered outside the course of participation in the qualifying clinical trial under the state plan or waiver, including a demonstration project under § 1115 of the Social Security Act. Such routine services and costs also include any item or service required to administer the investigational item or service.

Any service limits or cost sharing currently authorized under the approved Medicaid State Plan will apply to the ABP. The proposed ABP amendments will apply to Early Periodic Screening, Diagnoses, and Treatment Program benefits available under the Virginia State Plan for individuals younger than 21 years of age.

DMAS is soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed state plan amendment. Written comments or inquiries may be submitted within 14 days of this notice publication to Emily McClellan, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov) or may be submitted on the Virginia Regulatory Town Hall website at <http://townhall.virginia.gov/L/Forums.cfm>.

The Commonwealth assures compliance with the provisions of § 5006 (e) of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) related to Tribal populations.

To request a copy of the ABP SPA or a copy of this notice, contact Emily McClellan, Department of Medical Assistance

Services, 600 East Broad Street, Richmond, VA 23219, or [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for Aladdin Manufacturing Corporation

An enforcement action has been proposed for Aladdin Manufacturing Corporation, a wholly-owned subsidiary of Mohawk Industries Inc. for alleged violations in Rockbridge County, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Aladdin Manufacturing Corporation to address noncompliance with State Water Control Law. 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 will accept comments by email, fax, or postal mail from March 14, 2022, to April 15, 2022.

Contact Information: Celeste Horton, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [celeste.horton@deq.virginia.gov](mailto:celeste.horton@deq.virginia.gov).

### Proposed Enforcement Action for the Baptist General Association of Virginia

An enforcement action has been proposed with the Baptist General Association of Virginia for violations at the Eagle Eyrie Baptist Conference Center in Bedford County, Virginia. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). The staff contact person will accept comments by email or postal mail from March 14, 2022, through April 13, 2022.

Contact Information: Jerry Ford, Jr., Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, or email [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov).

### Proposed Enforcement Action for the Scott County Public Service Authority

An enforcement action has been proposed for the Scott County Public Service Authority for violations of the State Water Control Law at the Nickelsville wastewater treatment plant in Scott County. The State Water Control Board proposes to issue



a consent order to resolve violations associated with the facility. 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 will accept comments by email or postal mail from March 15, 2022, through April 14, 2022.

**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 Windcrest Holsteins Inc.**

An enforcement action has been proposed for Windcrest Holsteins Inc. for alleged violations in Rockingham County and Shenandoah County, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Windcrest Holsteins Inc. to address noncompliance with State Water Control Law. 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 will accept comments by email, fax, or postal mail from March 14, 2022, to April 20, 2022.

**Contact Information:** Celeste Horton, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email [celeste.horton@deq.virginia.gov](mailto:celeste.horton@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/cumulstab.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.

---

## General Notices

---