VIRGINIA REGISTER OF REGULATIONS

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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.

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.

PUBLICATION SCHEDULE AND DEADLINES

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

July 2024 through July 2025

Volume: Issue	Material Submitted By Noon*	Will Be Published On
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
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41:9	November 26, 2024 **(Tuesday)**	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 **(Monday)**	January 13, 2025
41:12	January 8, 2025	January 27, 2025
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41:24	June 25, 2025	July 14, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHYSICAL THERAPY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Physical Therapy conducted a periodic review and a small business impact review of **18VAC112-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 16, 2024, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it sets forth the requirements for licensure and standards of practice for physical therapy. The regulation is necessary to continue to renew licenses for physical therapy and to issue new licenses for physical therapy, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Physical Therapy has reviewed this regulation and determined that it is clearly written and understandable.

The board voted to retain the regulation as is. The public participation guidelines is a model regulation from the Department of Planning and Budget that all agencies adopt and that is only changed when a new model regulation is created. The board, in following the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), reviewed the regulation and determined no changes were needed.

The public needs to be able to engage in business of the board that affects them, and this regulation allows that. The board received no complaints regarding this specific regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2018. The model regulation has not changed since then. There is no impact on small businesses in this limited and focused regulation.

Contact Information: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of State Police conducted a periodic review and a small business impact review of **19VAC30-165, Regulations Relating to Standards and Specifications for Purple Warning Lights Used by Vehicles Leading or Escorting Funeral Processions**, and determined that this regulation should be amended. The department is publishing its report of findings dated May 21, 2024, to support this decision.

The regulation and the proposed amendments are necessary to meet statutory requirements and help protect public safety by ensuring the appropriate color of safety and warning lights. The current regulation is overly complex, difficult to understand, and nearly impossible to comply with or enforce. The proposed amended regulation will be easy to understand, comply with, and enforce.

As a result of this periodic review, the department has determined that the regulation should be amended to place the burden of complying with the applicable industry standards upon those who manufacture, sell, or install such lights. These amendments are the most effective method of reducing administrative burdens. Such individuals are in the business of producing and selling equipment that meets industry standards and therefore best equipped to ensure compliance.

The adoption of this regulation is mandated by § 46.2-1025 C of the Code of Virginia; therefore, the department must retain the regulation in some form. Neither complaints nor public comment regarding the existing regulation were received. Funeral homes order and install purple lights from dealers and manufacturers. The industry, through the Society of Automotive Engineers, has developed acceptable standards for the colors used in lighting equipment and follows those requirements.

The ability of funeral directors, dealers, and installers to rely on the warranty or certification by a manufacturer that their product complies with applicable industry standards places the burden of compliance where it belongs. The amendments will make the regulation easy to comply with and enforce. This simplification will minimize the impact of this regulation on small businesses.

Contact Information: Lieutenant Colonel Keenon Hook, Director, Bureau of Strategic Governance, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2239, or email keenon.hook@vsp.virginia.gov.

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 **22VAC40-601, Supplemental Nutrition Assistance Program**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated May 22, 2024, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth who are eligible for food assistance through the receipt of Supplemental Nutrition Assistance Program (SNAP) benefits. Maintaining the alternative provisions will result in consistent eligibility determinations. The provisions of the regulation are clearly written and easily understandable.

The board recommends retaining the regulation without any changes. Retaining the regulation allows local staff to determine SNAP eligibility and benefit amounts without factoring in revised procedures and lessens the likelihood of errors as local staff will not need to be retrained and systems changes will not be needed.

The regulation is necessary to govern SNAP in Virginia. SNAP offers Virginia citizens an opportunity to purchase nutritious foods, which adds to the welfare of Virginians. No public complaints or comments have been received about the provisions of the regulation. The regulation is concise and understandable. The regulation does not overlap or duplicate other federal or state regulations. There are no changes in technology or other factors that impact this regulation. The regulation does not affect small businesses.

Contact Information: Celestine Jackson, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7172, or email celestine.jackson1@dss.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending **6VAC35-101, Regulation Governing Juvenile Secure Detention Centers**. The purpose of the proposed action is to create provisions pertaining to community placement programs (CPPs), which are structured residential programs that seek to place committed youth in small settings closer to their home communities to increase family engagement and facilitate a smoother transition back to the community after release. All CPPs are operated at juvenile detention centers (JDCs), where committed youth are housed in units separate from the rest of the JDC population. CPPs are treated differently than other residential programs, including post-dispositional programs, at the JDCs. This different treatment has resulted in a different accountability structure for CPPs. The Department of Juvenile Justice has determined, and the board has supported the determination, that it would be in the best interests of CPP youth to establish regulations to govern these programs in a manner more consistent with other residential programs. Because all the existing CPPs are operated at JDCs, the department deems it appropriate to add these new provisions to 6VAC35-101 rather than create a new chapter.

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

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

Public Comment Deadline: July 17, 2024.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6497, or email kenneth.davis@djj.virginia.gov.

VA.R. Doc. No. R24-7827; Filed May 17, 2024, 3:08 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to include American Psychological Association approved trainings to the list of approved continuing education providers. The board is responding to a petition for rulemaking.

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

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

Public Comment Deadline: July 17, 2024.

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

VA.R. Doc. No. R24-18; Filed May 16, 2024, 8:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to (i) revise 18VAC140-20-37 to address in what practice settings and supervisory settings the various license types of social workers may practice and (ii) amend definitions in 18VAC140-20-10 related to practice settings and supervisory settings and actions to clarify and refine definitions for any terms necessary to support the amendments for 18VAC140-20-37.

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

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

Public Comment Deadline: July 17, 2024.

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

VA.R. Doc. No. R24-7916; Filed May 16, 2024, 8:42 a.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to reduce the requirements for licensure by endorsement in response to a petition for rulemaking the board received requesting that a veterinarian need only regularly engage in clinical practice for one year out of the last four for licensure by endorsement. Additionally, the amendments being considered would (i) eliminate the requirement that an applicant not be a respondent in any pending or unresolved board action in any jurisdiction; (ii) eliminate a requirement to complete at least 30 hours of continuing education in the preceding four years; and (iii) eliminate a requirement for

attestation that the applicant has read and will abide by all laws and regulations affecting veterinary medicine in the Commonwealth.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3804 of the Code of Virginia.

Public Comment Deadline: July 17, 2024.

Agency Contact: Kelli Moss, Acting Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4133, FAX (804) 767-1011, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. R24-15; Filed May 16, 2024, 8:41 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-35; repealing 4VAC20-510-37).**

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

Effective Date: June 1, 2024.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments streamline the cobia aquaculture permitting process.

4VAC20-510-35. Aquaculture of cobia; permit required.

~~A. Any person operating an aquaculture facility in which cobia that exceed the possession limit or are of sublegal size will be cultured, possessed, offered for sale, or sold shall first obtain a permit from the commissioner for the facility. That permit shall exempt the facility from the possession requirements described in 4VAC20-510-20, 4VAC20-510-25, and 4VAC20-510-30, and authorize the possession, culturing, and sale of sublegal size cobia~~ It shall be unlawful for any person to operate a cobia aquaculture facility without first obtaining a permit from the Marine Resources Commission (commission). This permit shall authorize and define the limits of activities concerning the purchase, possession, sale, giving, receiving, and transportation of aquacultured cobia. Any person in violation of any permit condition issued under this section may have the permit revoked at any time upon review by the commission. If the commission revokes any person's permit for an aquaculture facility, that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

~~B. The application for a cobia aquaculture permit shall list the name and address of the applicant, the type and location of the facility, and an estimate of production capacity. An aquaculture permit shall be valid for 10 years from the date of issue and may be renewed by the commissioner provided the permittee has complied with all of the provisions of this chapter. The issuance and continuation of any person's cobia aquaculture permit are contingent on that designated facility being open for inspection by the Marine Resources Commission for the purposes of determining compliance with this regulation. An aquaculture permit is not transferable.~~

~~C. Any person employed by a permitted cobia aquaculture facility for the purpose of harvesting cobia as broodstock for the aquaculture facility shall be exempt from the provisions of 4VAC20-510-20, 4VAC20-510-25, and 4VAC20-510-30 provided that person possesses a scientific collection permit issued by the commissioner.~~

4VAC20-510-37. ~~Aquaculture of cobia; sale, records, importation, and release.~~ (Repealed.)

~~A. All cobia produced by an aquaculture facility permitted under this section shall be packaged prior to sale with a printed label indicating the product is of aquaculture origin. When packaged and labeled according to these requirements, such fish may be transported and sold at retail or wholesale or for commercial distribution through normal channels of trade until reaching the consumer.~~

~~B. Cobia that measure less than the lawful minimum size described in 4VAC20-510-30 B but are the product of a permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labeled in accordance with the provisions contained in subsection A of this section.~~

~~C. It shall be unlawful for any cobia produced by an aquaculture facility located within or outside the Commonwealth of Virginia to be placed into the waters of the Commonwealth without first having notified the commissioner and having received written permission from the commissioner.~~

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (4VAC20-510)

2021 Recreational/Charter Reporting Form (rev. 1/2021)

Application for a Permit to Propagate Finfish (rev. 4/2024)

VA.R. Doc. No. R24-7896; Filed May 28, 2024, 1:51 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-280).**

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

Effective Date: July 17, 2024.

Agency Contact: Kim Beazley, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, telephone (804) 367-2102, or email regulatorycomment@vdh.virginia.gov.

Summary:

Pursuant to Chapter 417 of the 2023 Acts of Assembly, the amendments require hospitals with emergency departments to establish a security plan using standards established by the International Association for Healthcare Security and Safety or other industry standards. The security plan must be based on the results of a security risk assessment of each emergency department location of the hospital. This security plan must include the presence of at least one off-duty law-enforcement officer or trained security personnel who is present in the emergency department at all times as indicated to be necessary and appropriate by the security risk assessment.

12VAC5-410-280. Emergency service.

A. Hospitals with an emergency ~~department/service~~ department or service shall have 24-hour staff coverage and shall have at least one physician on call at all times. Hospitals without emergency service shall have written policies governing the handling of emergencies.

B. No ~~less~~ fewer than one registered nurse shall be assigned to the emergency service on each shift. Such assignment need not be exclusive of other duties, but must have priority over all other assignments.

C. Those hospitals that provide ambulance services shall comply with Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia and 12VAC5-31.

D. The hospital shall provide equipment, drugs, supplies, and ancillary services commensurate with the scope of anticipated needs, including radiology and laboratory services and facilities for handling and administering of blood and blood products. Emergency drugs and equipment shall remain accessible in the emergency department at all times.

E. Current roster of medical staff members on emergency call, including alternates and medical specialists or consultants shall be posted in the emergency department.

F. Hospitals shall make special training available, as required, for emergency department personnel.

G. Toxicology reference material and poison antidote information shall be available along with telephone numbers of the nearest poison control centers.

H. Each emergency department shall post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to gain assistance or report crimes. This notice shall be in a place readily visible and accessible to the public, such as the patient admitting area or public or patient restrooms. The notice shall meet the requirements of § 40.1-11.3 C of the Code of Virginia.

I. Every hospital with an emergency department shall establish ~~protocols to ensure that security personnel of the emergency department receive training appropriate to the populations served by the emergency department. This training may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis.~~ a security plan for each emergency department that:

1. Is developed using standards established in the Healthcare Security Industry Guidelines, 13th Edition (International Association for Healthcare Security and Safety);

2. Is based on:

a. The results of a security risk assessment of each emergency department location of the hospital; and

b. Risks for the emergency department identified in consultation with the emergency department medical director and nurse director, including:

(1) Trauma level designation;

(2) Overall patient volume;

(3) Volume of psychiatric and forensic patients;

(4) Incidents of violence against staff;

(5) Level of injuries sustained from such violence; and

(6) Prevalence of crime in the community;

3. Includes the presence of one or more off-duty law-enforcement officers or trained security personnel in the emergency department at all times, except as provided in subsection L of this section, and as indicated to be necessary and appropriate by the security risk assessment; and

4. Outlines training requirements for security personnel in:

a. The potential use of and response to weapons;

b. Defensive tactics;

c. De-escalation techniques;

d. Appropriate physical restraint and seclusion techniques;

e. Crisis intervention;

f. Trauma-informed approaches; and

g. Safely addressing situations involving patients, family members, or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis.

J. The hospital may:

1. Accept from its security personnel the satisfactory completion of the Department of Criminal Justice Services minimum training standards for auxiliary police officers as required by § 15.2-1731 of the Code of Virginia in lieu of the training prescribed by subdivision I 4 of this section; and

2. Request to use industry standards other than those specified in subdivision I 1 of this section by submitting a written request for alternative industry standards to the OLC that:

a. Specifies the title, edition if applicable, and author of the alternative industry standards; and

b. Provides an explanation of how the alternative industry standards are substantially similar to those specified in subdivision I 1 of this section.

K. Every hospital with an emergency department shall update its security plan, including its security risk assessment, for each emergency department location of the hospital as often as necessary but not to exceed two years.

L. The commissioner shall provide a waiver from the requirement that at least one off-duty law-enforcement officer or trained security personnel be present at all times in the emergency department if the hospital demonstrates that a different level of security is necessary and appropriate for any of its emergency departments based upon findings in the security risk assessment.

1. A hospital shall submit a written request for a waiver pursuant to this subsection and shall:

a. Specify the location of the emergency department for which the waiver is requested;

b. Provide a dated copy of the security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and

c. Indicate the requested duration of the waiver.

2. The commissioner shall specify in any waiver granted pursuant to this subsection:

a. The location of the emergency department for which the waiver is granted;

b. The level of security to be provided at the specified emergency department location;

c. The effective date of the waiver; and

d. The duration of the waiver, which may not exceed two years from the date of issuance.

3. A hospital granted a waiver pursuant to this subsection shall:

a. Notify the commissioner in writing no less than 30 calendar days after its security risk assessment changes if such change impacts when or how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted;

b. Provide a dated copy of the changed security risk assessment performed for the specified emergency department that has been reviewed and approved by the governing body or its designee; and

c. Indicate whether the hospital is:

(1) Requesting a modification to its existing waiver; or

(2) Surrendering its existing waiver.

4. The commissioner may request additional information from the hospital in evaluating the requested waiver.

5. The commissioner may modify or rescind a waiver granted pursuant to this subsection if:

a. Additional information becomes known that alters the basis for the original decision, including if the security risk assessment changes regarding how many off-duty law-enforcement officers or trained security personnel should be present at the emergency department for which a waiver was granted; or

b. Results of the waiver jeopardize the health or safety of patients, employees, contractors, or the public.

6. Pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), the Virginia Department of Health:

a. May not release to the public information that a hospital discloses pursuant to this subsection, the waiver request, or the response to the waiver to the extent those records are exempt from disclosure; and

b. Shall notify the Secretary of Public Safety and Homeland Security of any request for records specified in subdivision L 6 a of this section, the person making such request, and the Virginia Department of Health's response to the request.

M. Each hospital with an emergency department shall establish a protocol for treatment of individuals experiencing a substance use-related emergency to include the completion of appropriate assessments or screenings to identify medical interventions necessary for the treatment of the individual in the emergency department. The protocol may also include a process for patients who are discharged directly from the emergency department for the recommendation of follow-up care following discharge for any identified substance use disorder, depression, or mental health disorder, as appropriate, that may include:

1. Instructions for distribution of naloxone;

2. Referrals to peer recovery specialists and community-based providers of behavioral health services; or

3. Referrals for pharmacotherapy for treatment of drug or alcohol dependence or mental health diagnoses.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-410)

Guidelines for Design and Construction of Hospitals, 2018 Edition, Facility Guidelines Institute, Washington D.C., https://www.fgiguidelines.org/

Guidelines for Design and Construction of Outpatient Facilities, 2018 Edition, Facility Guidelines Institute, Washington, D.C., https://www.fgiguidelines.org/

Healthcare Security Industry Guidelines, International Association for Healthcare Security and Safety, 13th Edition, https://www.iahss.org/

VA.R. Doc. No. R24-7156; Filed May 28, 2024, 9:51 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-520).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: July 17, 2024.

Effective Date: August 1, 2024.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Purpose: These changes are essential to protect the health, safety, and welfare of citizens because they clarify when documents are considered filed during the provider appeals process, including when documents are filed via the Appeals Information Management System (AIMS) Portal. This makes it easier for providers to understand the appeals process, which in turn may increase the likelihood that they continue to serve Medicaid members.

Rationale for Using Fast-Track Rulemaking Process: The changes in this regulatory action are expected to be noncontroversial because they do not represent changes in practice and do not involve any costs to Medicaid providers or to the Commonwealth. Instead, the changes clarify when documents are considered filed and add the AIMS portal to regulation. The AIMS portal neither restricts access to provider appeals nor negatively impacts providers. Providers without easy access to the AIMS portal can continue to use other methods to submit appeals and associated documents.

Substance: A provider appeal is a request for a neutral party to review the action taken by DMAS or one of its contractors that impacts either a provider's reimbursement for services rendered to a Medicaid recipient or a provider's enrollment as a Medicaid participating provider. It is a two-step process that begins with an informal appeal. If the provider disagrees with the decision issued, the second step is to file a formal appeal. Documents submitted during the provider appeals process are considered filed when they are either physically date-stamped by the DMAS Appeals Division or date-stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal. In 2021, DMAS launched the AIMS portal as a way for providers and their authorized representatives to submit informal and formal provider appeals, track the status of appeals, upload documents, review appeal documents, and withdraw appeals. AIMS helps ensure that provider appeals are processed pursuant to regulations governing Medicaid appeals, particularly the application of dismissal penalties for DMAS and providers if certain steps are not completed within specified timeframes. Providers without easy access to the AIMS portal can continue to use email and facsimile to

electronically submit documents. They can also use regular United States mail or a delivery service.

Issues: The primary advantage is that the amendments clarify that documents submitted during the provider appeals process are considered filed when they are either physically date-stamped by the Appeals Division or date-stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal. AIMS provides a convenient way for providers to file an appeal, submit documents that can be electronically time-stamped, and monitor the status of appeals online throughout the process. AIMS also helps ensure that provider appeals are processed pursuant to regulations governing Medicaid appeals. There are no disadvantages to the public, the agency, or the Commonwealth.

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 and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services, on behalf of the Board of Medical Assistance Services, proposes to update the regulation to reflect that with the implementation in 2021 of the new online portal for provider appeals, date stamps can be applied to documents electronically.

Background. A provider appeal is a request for a neutral party to review the action taken by the Department of Medical Assistance Services (DMAS) or one of its contractors that impacts either a provider's reimbursement for services rendered to a Medicaid recipient or a provider's enrollment as a Medicaid participating provider. It is a two-step process that begins with an informal appeal. If the provider disagrees with the decision issued, the second step is to file a formal appeal. When a document is required to be filed in a provider appeal, the current regulatory language states that the document is considered filed when it is date-stamped by DMAS. In 2021, however, DMAS launched the Appeals Information Management System (AIMS) portal[2] as a way for providers and their authorized representatives to submit informal and formal provider appeals, track the status of appeals, upload documents, review appeal documents, and withdraw appeals, free of charge. AIMS helps ensure provider appeals are processed pursuant to regulations governing Medicaid appeals, particularly the dismissals for DMAS and providers if certain steps are not completed within specified timeframes. The use of AIMS is optional as such providers without easy access to the portal can continue to use regular U.S. mail, a delivery service, or submit documents via electronic mail or facsimile. This action would add to the regulation that when DMAS or a provider uses the appeals portal, the date stamp will be automatically applied electronically to any submitted document, and this date stamp will be considered the date of the filing.

Estimated Benefits and Costs. Since the appeals portal was made available in 2021, a date stamp has been automatically applied to any documents filed via the portal, which has been considered as the date when the document is filed. The proposed amendments to the regulation would incorporate this practice into the regulatory text. Because the proposed changes update the regulatory text to incorporate a current practice, the main benefit of this change is to clarify that documents submitted during a provider appeal via the portal will be electronically date-stamped and considered filed on that date.

Businesses and Other Entities Affected. All Medicaid enrolled providers have the right to appeal adverse actions. DMAS currently has approximately 80,000 unique enrolled providers. The proposed amendments primarily affect providers that file an informal or a formal appeal. In 2022 and 2021, there were 7,199 and 6,102 total appeals (both informal and formal) filed respectively.[3] No providers appear to be disproportionately affected.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.[4] 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, the proposed changes would update the regulatory text to reflect the current practice of electronically applying a date stamp to documents filed through the portal the use of which is optional and free of charge. Thus, no adverse impact is indicated.

Small Businesses[5] Affected.[6] Although most of the 80,000 unique enrolled providers in Medicaid are small businesses, the proposed amendments do not appear to adversely affect them.

Localities[7] Affected.[8] The proposed amendments do not disproportionally affect any particular localities, nor introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed changes do not appear to affect the use and value of private property nor real estate development costs.

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[1]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.

[2] See https://appeals-registration.dmas.virginia.gov/provider.

[3] Data source: DMAS.

[4] 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.

[5] 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."

[6] 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.

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

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Background: The Appeals Information Management System (AIMS) is a secure web-based portal that provides a convenient way for providers and their authorized representatives to submit provider appeals, track the status of appeals, upload documents, review appeal documents, and withdraw appeals. AIMS helps ensure provider appeals are processed pursuant to regulations governing Medicaid appeals, particularly the application of dismissal penalties if certain steps are not completed within specified timeframes. Providers without easy access to the AIMS portal can continue to use email and facsimile to electronically submit documents or regular United States mail or a delivery service.

Summary:

The amendments clarify when documents are considered filed and adds AIMS to the regulation in accordance with current Department of Medical Assistance Services provider appeals practices.

12VAC30-20-520. Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and supersedes any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), including ~~DMAS'~~ the DMAS interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall transmit all items to the last known address of the provider. It is presumed that DMAS transmits items on the date noted on the item. It is presumed that providers receive items transmitted by United States mail to their last known address within three days after DMAS transmits the item by United States mail. It is presumed that providers receive items transmitted by facsimile, ~~electronic mail~~ email, or other electronic submission on the date transmitted. It is presumed that providers receive items transmitted by courier or other hand delivery on the date of delivery to the provider's last known address. These presumptions in this section shall apply unless the provider, through evidence beyond a mere denial of receipt, introduces evidence sufficient to rebut the presumption. If a provider requests a copy of an item, the transmittal date for the item remains the date originally noted on the item, and not the date that the copy of the requested item is transmitted. A provider's failure to accept delivery of an item transmitted by DMAS, or a provider's failure to open an item upon receipt, shall not result in an extension of any of the timelines established by this part.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is ~~date stamped~~ date-stamped by the DMAS Appeals Division ~~in Richmond, Virginia~~. When DMAS or a provider is using the online appeals portal administered by the DMAS Appeals Division, the date stamp will be automatically applied when the item completes transmission to the Appeals Division. When email or facsimile is used, the date stamp will be reflected on the date and time of the transmission. If other means are used, such as postal mail or hand delivery, the date stamp will be applied physically by the DMAS Appeals Division upon receipt.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed for the full or partial day, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at ~~DMAS'~~ the DMAS main office in Richmond, Virginia, or at such other place as agreed upon in writing by DMAS, the provider, and the informal appeals agent for informal appeals. For formal appeals, this agreement shall be between DMAS, the provider, and the hearing officer.

G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary ~~attorneys'~~ attorney fees and costs associated with an

informal or formal appeal if the provider substantially prevails on the merits of the appeal and ~~DMAS'~~ the DMAS position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

I. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time shall be ~~date stamped~~ date-stamped on the next day DMAS is officially open. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time on the due date shall be untimely.

VA.R. Doc. No. R24-7441; Filed May 28, 2024, 6:13 p.m.

Fast-Track Regulation

Titles of Regulations: **12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-10, 12VAC30-110-220, 12VAC30-110-370; adding 12VAC30-110-185).**

12VAC30-120. Waivered Services (amending 12VAC30-120-670).

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-40, 12VAC30-141-700).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: July 17, 2024.

Effective Date: August 1, 2024.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Purpose: These amendments clarify (i) the burden of proof in client appeals, (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings. These amendments are essential to protect public health, safety, or welfare in that they ensure that the client appeals regulations are clear to Medicaid applicants. Medicaid applicants who are denied eligibility have a right to appeal that denial, and those appeals ensure that the eligibility rules are applied fairly and uniformly, which helps ensure the integrity of the Medicaid program and that all individuals who qualify for Medicaid services are able to receive them.

Rationale for Using Fast-Track Rulemaking Process: Item 317 GG 2 of the 2021 Appropriations Act mandated that the department make these changes via an emergency regulation. This fast-track rulemaking action follows the emergency and Notice of Intended Regulatory Action. The action is expected to be noncontroversial because the action allows applicants and members to have a full understanding of their appeal rights and what occurs throughout the appeal process. The changes clarify portions of the appeal process that have been at issue in cases in the past, including the scope of the appeal and who is assigned the burden of proof. Furthermore, the changes are noncontroversial because the changes do not place any additional requirements on the appellant. Instead, some of the changes are more favorable to the appellant, including specifying the requirements for the appeal summary, affording the individual a de novo hearing, and assigning the burden of proof to the party who is seeking the change, as opposed to the prior model of placing the burden on the appellant in all appeals.

Substance: Amendments are being made to 12VAC30-110, including the sections on definitions, evidentiary hearings, and final decisions. A new section on client appeals is being created. Additional amendments for consistency are being made to 12VAC30-120 and 12VAC30-141.

Issues: The primary advantage of these amendments is that the amendments clarify the client appeal rules for Medicaid members. There are no disadvantages to the public or the agency.

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 and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to Item 317 GG of the 2021 Special Session I Acts of the General Assembly,[2] the Director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to clarify the client appeal rules for Medicaid members.

Background. This regulation governs the client appeals for Medicaid members when an adverse action regarding eligibility or covered services has been taken against them by DMAS or its contractor (e.g., managed care organizations (MCOs),[3] local department of social services, or state agencies such as the Department of Behavioral Health and Developmental Services, the Department of Social Services, etc.). According to DMAS, prior to the Fall of 2020, the scope of client appeals was limited to whether the action taken was correct based on the information the agency or contractor had

when it initially took the action. However, a legal aid organization in Virginia asserted that the lack of de novo hearings violated federal requirements. In a de novo hearing, the hearing officer considers all relevant evidence submitted during the appeal in order to make a determination on the issues on appeal, even if the evidence was not previously received by the agency or contractor. After consultations with the Office of the Attorney General, DMAS began processing client appeals as de novo hearings in October 2020 to align its appeal process with federal regulations. Also, at the request of the agency, Item 317 GG of the 2021 Appropriation Act was included in the budget, which stated:

> 1. Out of amounts appropriated in the items for this agency, $34,135 the first year and $598,763 the second year from the general fund and $34,135 the first year and $823,476 the second year from nongeneral funds are provided to align the agency client appeals with federal requirements. Administrative funding (49901) shall be used to create seven new appeals staff positions that will respond to additional appeals and ensure regulatory compliance. The remaining support (appropriated in program 456) shall be used to fund necessary managed care contract changes needed to accommodate workflow adjustments.
>
> 2. The Department of Medical Assistance Services shall amend regulations to clarify (i) the burden of proof in client appeals; (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings. The department shall have the authority to promulgate emergency regulations to implement these amendments within 280 days or less from the enactment of this Act.

To implement this legislative mandate, an emergency regulation was promulgated effective September 8, 2022.[4] This regulatory action would permanently replace the emergency regulation.

Estimated Benefits and Costs. The proposed action would make permanent an emergency regulation that clarified (i) the burden of proof in client appeals, (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings as required by the budget language. The main impact of the legislation was clarification of the client appeal rules for Medicaid members to be consistent with federal rules and to avoid a potential lawsuit by a legal aid organization. The implementation of the changes required $1.4 million in total funding annually (i.e., $598,763 from state and $823,476 from federal sources). These funds are used by DMAS to pay for seven additional appeals staff and other non-personnel costs. More specifically, the funds address appeal-related customer service inquiries, the processing of appeals, the review of documents submitted with each appeal, producing an appeal summary, costs associated with testifying at the hearing, and producing a transcript of the hearing recording if a case is appealed to the court system. On the other hand, the changes would have likely also benefited the clients who wanted to pursue an appeal and were willing to incur additional litigation costs to reverse an adverse action. However, these impacts result from the legislative mandate itself and not from this regulatory action. Additionally, de novo hearings have been conducted since October 2020. Thus, no new economic impact is expected when these changes become permanent. In this sense, the impact of the proposal is to permanently clarify in the regulation the de novo appeal process as mandated and envisioned by the legislation, and as already implemented by the emergency regulation on a temporary basis.

Businesses and Other Entities Affected. Medicaid members who file a client appeal may be affected by these changes. According to DMAS, in calendar years 2021, 2022, and 2023, there were 4,087, 4,483, and 8,606 client appeals, respectively. The increase in 2023 was due to the end of the federal Medicaid continuous coverage requirements. Additionally, relatively few (i.e., historically fewer than 20 per year) client cases are appealed to the court system. No Medicaid members appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As noted, the primary impact of this regulatory action is to permanently incorporate in the regulation clarifications made to the Medicaid client appeal process as mandated by the legislation. Thus, no adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not adversely affect small businesses.

Localities[9] Affected.[10] The proposed action does not introduce costs or other effects on localities.

Projected Impact on Employment. The budget language provided an additional seven staff positions at DMAS and may have led to some Medicaid members hiring legal help to take advantage of de novo hearings. However, the proposed regulation itself does not affect total employment.

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor on real estate development costs is expected from this regulatory action to replace an emergency regulation permanently.

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[1]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.

[2] https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/317/.

[3] If an action involved a member enrolled in an MCO, the individual must appeal through the MCO first. Therefore, MCO's handle their own internal appeal process.

[4] https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9321.

[5] 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.

[6] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[7] 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."

[8] 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.

[9] "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.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Item 317 GG 2 of the 2021 Appropriations Act, the amendments clarify (i) the burden of proof in client appeals, (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings by adding a definition of "day"; adding a new section describing what must be included in agency appeal summaries; clarifying requirements for de novo hearings, for which party in a given situation bears the burden of proof, and for the submission of evidence; and stating that all state fair hearings must be conducted de novo.

12VAC30-110-10. Definitions.

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

"Action" means a denial of, termination of, suspension of, or reduction in covered benefits or services; a denial of or termination, suspension, or reduction in Medicaid eligibility; or an increase in beneficiary liability, including a determination that a beneficiary must incur a greater amount of medical expenses in order to establish income eligibility in accordance with 42 CFR 435.121(e)(4) or 42 CFR 435.831 or is subject to an increase in premiums or cost-sharing charges under Subpart A of 42 CFR Part 447. It also means (i) determinations by a skilled nursing facility or nursing facility to transfer ~~or,~~ discharge, or fail to readmit a resident and (ii) an adverse determination made by a state with regard to the preadmission screening and resident review requirements of § 1919(e)(7) of the Social Security Act. It also means the failure to take an application for benefits or to act with reasonable promptness on an application for benefits, on a reported change in circumstances, or on a request for a particular medical service.

"Adverse determination" means a determination made in accordance with § 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

"Agency" means:

1. An agency or contractor that, on the department's behalf, makes determinations regarding benefits or applications for benefits provided by the department; or

2. The department itself.

"Appellant" means (i) an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an action regarding ~~his~~ the applicant's benefits or ~~his~~ the applicant's eligibility for benefits and (ii) a nursing facility resident who seeks to challenge a transfer, ~~or~~ discharge, or failure to readmit. Appellant also means an individual who seeks to challenge an adverse determination regarding services provided by a nursing facility.

"Burden of proof" means the duty placed upon a party to prove or disprove a disputed fact.

"Date of action" means the intended date on which a termination, suspension, reduction, transfer, or discharge becomes effective. It also means the date of the determination made by a state with regard to the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Social Security Act.

"Day" means calendar day unless otherwise specified or required by law.

"De novo" means that, where a hearing is required, the department's hearing officer will consider all relevant evidence submitted during the appeal in order to make a determination on the issues on appeal, even if the evidence was not previously received by the agency.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Appeals Division.

"Fail to readmit" means when a nursing facility refuses to readmit a resident who meets the criteria for a bed hold under 42 CFR 438.15.

"Final decision" means a written determination by a hearing officer that is binding on the department, unless modified on appeal or review.

"Hearing" means the de novo evidentiary hearing described in this chapter, conducted by a hearing officer employed by the department.

"Preponderance of the evidence" means that the party with the burden of proof has demonstrated to the hearing officer that their position on the issue in the appeal is more likely valid than not.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

"Send" means to deliver by mail or in electronic format consistent with 42 CFR 431.201 and 42 CFR 435.918.

"State fair hearing" means the entire appeal process for applicants and beneficiaries as set forth in 42 CFR Subpart E.

12VAC30-110-185. Appeal summary.

A. The agency proposing the action about which the individual requested the state fair hearing shall complete an appeal summary, which shall include:

1. The appellant's name and case name, if different;

2. The appellant's case number, Medicaid identification number, or other identifying information;

3. The agency or contractor responsible for the appellant's case;

4. A summary of the facts surrounding and the grounds supporting the action, the failure to take an application for benefits or to act with reasonable promptness on an application for benefits, a reported change in circumstances, or a request for a particular medical service. The summary of facts must include:

a. A list of the documents reviewed or relied upon, including those reviewed as part of the appeal.

b. A narrative explanation describing the agency's or contractor's position on the action when considering all documentation submitted until the appeal summary is filed. When the action under appeal is for a reduction of termination of existing coverage, the narrative should include an explanation as to what has changed or how the previous approval was made in error.

5. Citations to the statutes, regulations, and specific provisions of the Virginia Medical Assistance Eligibility manual or other policy that support the agency's action; and

6. The adverse benefit determination or the decision notice and any other documents relating to the appeal upon which the agency relied in making its decision.

B. The summary shall be filed with the department's Appeals Division with a complete copy sent to the appellant and the appellant's authorized representative, if applicable, at least five business days before the hearing date.

12VAC30-110-220. Evidentiary hearings.

~~A~~ A. General. The hearing officer shall review all agency determinations ~~which~~ that are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; and issue a written final decision ~~sustaining, reversing, or remanding each case to the agency for further proceedings~~ that is based on the evidence, policy, laws, and regulations relevant to the appeal.

B. De novo hearing. All hearings shall be considered "de novo," meaning that the department's hearing officer will consider all relevant evidence submitted during the appeal in order to make a determination on the issues on appeal, even if the evidence was not previously received by the agency. The hearing officer shall consider testimony and evidence that explains, supports, or is probative to the issues on appeal. In the de novo hearing, no deference is given to the agency or contractor who took the action.

C. Burden of proof. The burden of proof shall be assigned to the party that is attempting to make a change. If an individual is seeking initial Medicaid eligibility, the initial approval of Medicaid covered services, or eligibility for a higher level of coverage than has already been approved, the individual has the burden of proof. Conversely, when an already-eligible individual is facing a proposed termination or reduction in Medicaid eligibility or medical services, the burden of proof shall be assigned to the entity that has proposed the change to an individual's coverage. To prevail in the appeal, the party with the assigned burden of proof shall establish its position by a preponderance of the evidence.

D. Submission of evidence. The appellant's appeal request should include all documents the appellant would like considered during the appeal. The appellant can also submit additional documents leading up to and during the appeal hearing. The hearing officer has the discretion to reschedule or delay a hearing in order to allow the hearing officer and agency time to review documents submitted close to or at the

scheduled hearing. Post-hearing supplementation of the record is addressed in 12VAC30-110-360. If the appeal request does not identify the action being appealed with reasonable specificity, include documentation to validate authorization for representation, if elected, or the department requests good cause for late filing of the appeal, then delay will be added to the appeal decision due date per 42 CFR 431.244.

E. Previously approved coverage. In an appeal involving a proposed termination or reduction of previously approved coverage, the existence of the prior approval shall create a presumption that the approval was proper when it was previously made if it was consecutive to the current request. The strength of this presumption is directly related to the number and duration of previous approvals. For the entity that has proposed the termination or reduction to satisfy its burden of proof, it must demonstrate that the individual's circumstances have changed or that the previous approval was made in error.

12VAC30-110-370. Final decision and transmission of the hearing record.

A. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision ~~which either sustains or reverses the agency action or remands the case to the agency for further action consistent with his written instructions~~ based upon the evidence and testimony presented. The hearing officer's final decision shall be considered as the agency's final administrative action pursuant to 42 CFR~~,~~ 431.244(f). The final decision shall include:

1. A description of the procedural development of the case;

2. Findings of fact that identify supporting evidence;

3. Conclusions of law that identify supporting regulations and law;

4. Conclusions and reasoning;

5. The specific action to be taken by the agency to implement the decision;

6. The deadline date by which further action must be taken; and

7. A cover letter stating that the hearing officer's decision is final, and stating that the final decision may be appealed directly to circuit court as provided in 12VAC30-110-40.

B. The hearing record shall be forwarded to the appellant and ~~his~~ the appellant's authorized representative with the final decision.

12VAC30-120-670. State fair hearing process and final decision.

A. All state fair hearings shall be conducted de novo per 12VAC30-110-220. As such, no deference will be given to the entity that made the adverse action being appealed.

B. All state fair hearings must be scheduled at a reasonable time, date, and place, and the appellant and the appellant's authorized representative shall be notified in writing prior to the hearing.

1. The state fair hearing location will be determined by the Appeals Division.

2. A state fair hearing ~~shall~~ may be rescheduled at the appellant's request no more than twice unless compelling reasons exist, which shall be determined by the department hearing officer.

3. Rescheduling the state fair hearing at the appellant's request will result in automatic waiver of the 90-day deadline for resolution of the appeal. The delay date for the decision will be calculated as set forth in 12VAC30-120-650 H and I.

~~B.~~ C. The state fair hearing shall be conducted by a department hearing officer. The hearing officer shall review the complete record for all MCO decisions that are properly appealed; conduct informal, fact-gathering state fair hearings; evaluate evidence presented; research the issues; and render a written final decision.

~~C.~~ D. Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeal record shall be made accessible to the appellant and the appellant's authorized representative at a convenient place and time before the date of the state fair hearing, as well as during the state fair hearing. The appellant and the appellant's authorized representative may examine the content of the appellant's case file and all documents and records the department will rely on at the state fair hearing except those records excluded by law.

~~D.~~ E. Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the state fair hearing may request in writing the issuance of a subpoena. The request must be received by the department at least 10 ~~working~~ business days before the scheduled state fair hearing. Such request shall (i) include the witness's or respondent's name, home and work addresses, and county or city of work and residence; and (ii) identify the sheriff's office that will serve the subpoena.

~~E.~~ F. The hearing officer shall conduct the state fair hearing; decide on questions of evidence, procedure, and law; question witnesses; and assure that the state fair hearing remains relevant to the issue being appealed. The hearing officer shall control the conduct of the state fair hearing and decide who may participate in or observe the state fair hearing.

~~F.~~ G. State fair hearings shall be conducted in an informal, ~~nonadversarial~~ impartial manner. The appellant ~~or~~ and the appellant's authorized representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question

or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

~~G.~~ H. The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

~~H.~~ I. The hearing officer may leave the state fair hearing record open for a specified period of time after the state fair hearing in order to receive additional evidence or argument from the appellant ~~or~~ and the appellant's authorized representative.

1. At the appellant's option, the hearing officer may order an independent medical assessment when the appeal involves medical issues, such as a diagnosis, an examining physician's report, or a medical review team's decision, and the hearing officer determines that it is necessary to have an assessment by someone other than the person or team who made the original decision (e.g., to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence). A medical assessment ordered pursuant to this chapter shall be at the department's expense, shall not extend any of the timeframes specified in this chapter, shall not disrupt the continuation of benefits, and shall become part of the record.

2. The hearing officer may receive evidence that was not presented by either party if the record indicates that such evidence exists, and the appellant or the appellant's authorized representative requests to submit it or requests that the hearing officer secure it.

3. If the hearing officer receives additional evidence from an entity other than the appellant or the appellant's authorized representative, the hearing officer shall send a copy of such evidence to the appellant and the appellant's authorized representative and give the appellant or the appellant's authorized representative the opportunity to comment on such evidence in writing or to have the state fair hearing reconvened to respond to such evidence.

4. Any additional evidence received will become a part of the state fair hearing record, but the hearing officer must determine whether or not it will be used in making the final decision.

~~I.~~ J. After conducting the state fair hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision ~~that sustains or reverses, in whole or in part, the MCO's adverse benefit determination or remands the case to the MCO for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions~~. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue;

2. Relevant facts, to include a description of the procedural development of the case;

3. Conclusions of law, regulations, and policy that relate to the issue;

4. Discussions, analysis of the accuracy of the MCO's appeal decision, conclusions, and hearing officer's decision;

5. Further action, if any, to be taken by the MCOs to implement the hearing officer's decision;

6. The deadline date by which further action must be taken; and

7. A cover letter informing the appellant and the appellant's authorized representative of the hearing officer's decision. The letter must indicate that the hearing officer's decision is final, and that the final decision may be appealed directly to circuit court.

~~J.~~ K. A copy of the state fair hearing record shall be forwarded to the appellant and the appellant's authorized representative with the final decision.

~~K.~~ L. An appellant who disagrees with the hearing officer's final decision described in this section may seek judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Rules of the Supreme Court of Virginia, Part Two A. Written instructions for requesting judicial review must be provided to the appellant or the appellant's authorized representative with the hearing officer's decision, and upon request by the appellant or authorized representative.

12VAC30-141-40. Appeal of adverse actions or adverse benefit determinations.

A. Upon written request, all FAMIS applicants and enrollees shall have the right to a state fair hearing of an adverse action made by the local department of social services, CPU, or DMAS and to an internal appeal of an adverse benefit determination made by an MCO.

B. During the appeal of a suspension or termination of enrollment or a reduction, suspension, or termination of services, the enrollee shall have the right to continuation of coverage if the enrollee requests an internal appeal with the MCO or an appeal to DMAS prior to the effective date of the suspension or termination of enrollment or suspension, reduction, or termination of services.

C. An appeal of an adverse action made by the local department of social services, CPU, or DMAS shall be heard and decided by an agent of DMAS who has not been directly involved in the adverse action under appeal.

D. An internal appeal of an adverse benefit determination made by the MCO must be conducted by a person or agent of the MCO who has not been directly involved in the adverse benefit determination under appeal.

E. Pursuant to 42 CFR 438.402(c)(1)(B), after exhausting the MCO's internal appeals process, there shall be opportunity for the enrollee to request an external medical review by an independent external quality review organization. "External quality review organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS. The review is optional and shall not be required before proceeding to a state fair hearing. The review shall not extend any of the timeframes for issuing a decision and shall not disrupt any continuation of coverage granted to the enrollee.

F. There will be no opportunity for appeal of an adverse action to the extent that such adverse action is based on a determination by the director that funding for FAMIS has been terminated or exhausted. There will be no opportunity for appeal if the sole basis for the decision is a provision in the State Plan or in a state or federal law requiring an automatic change in eligibility or enrollment or is a change in coverage under the health benefits package that affects all applicants or enrollees or a group of applicants or enrollees without regard to their individual circumstances.

G. The burden of proof shall be ~~upon the applicant or enrollee to show that an adverse action or adverse benefit determination is incorrect~~ assigned to the party who is attempting to make a change per 12VAC30-110-220 C.

H. At no time shall the failure of the local department of social services, MCO, CPU, or DMAS ~~failure~~ to meet the timeframes set in this chapter or set in the MCO or DMAS written appeal procedures constitute a basis for granting the applicant or enrollee the relief sought.

I. Adverse actions related to health benefits covered through the FAMIS Select program shall be resolved between the insurance company or employer's plan and the FAMIS Select enrollee and are not subject to further appeal by DMAS or its contractors.

12VAC30-141-700. Appeal of adverse actions or adverse benefit determinations.

A. Upon request, all FAMIS MOMS program applicants and enrollees shall have the right to a state fair hearing of an adverse action made by the local department of social services, CPU, or DMAS, or an internal appeal of an adverse benefit determination made by the MCO.

B. During the appeal of a suspension or termination of enrollment or a reduction, suspension, or termination of services, the enrollee shall have the right to continuation of coverage if the enrollee requests an internal appeal with the MCO or an appeal to DMAS prior to the effective date of the suspension or termination of enrollment or suspension, reduction, or termination of services.

C. An appeal of an adverse action made by the local department of social services, CPU, or DMAS shall be heard and decided by an agent of DMAS who has not been directly involved in the adverse action under appeal.

D. An internal appeal of an adverse benefit determination made by the MCO must be conducted by a person or agent of the MCO who has not been directly involved in the adverse benefit determination under appeal.

E. Pursuant to 42 CFR 438.402(c)(1)(B), after exhausting the MCO's internal appeals process, there shall be opportunity for the enrollee to request an external medical review by an independent external quality review organization. "External quality review organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS MOMS. The review is optional and shall not be required before proceeding to a state fair hearing. The review shall not extend any of the timeframes for issuing a decision and shall not disrupt any continuation of coverage granted to the enrollee.

F. There will be no opportunity for appeal of an adverse action to the extent that such adverse action is based on a determination by the director that funding for FAMIS MOMS has been terminated or exhausted. There will be no opportunity for appeal if the sole basis for the decision is a provision in the State Plan or in a state or federal law requiring an automatic change in eligibility or enrollment or a change in coverage under the health benefits package that affects all applicants or enrollees or a group of applicants or enrollees without regard to their individual circumstances.

G. The burden of proof shall be ~~upon the applicant or enrollee to show that an adverse action or adverse benefit determination is incorrect~~ assigned to the party who is attempting to make a change per 12VAC30-110-220 C.

H. At no time shall the failure of MCO, LDSS, CPU, or DMAS ~~failure~~ to meet the timeframes set in this chapter or set in the MCO or DMAS written appeal procedure constitute a basis for granting the applicant or enrollee the relief sought.

VA.R. Doc. No. R23-6871; Filed May 28, 2024, 6:26 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Behavioral Health and Developmental Services is claiming an exemption from the Administrative Process Act in accordance with Chapter 795 of the 2024 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act.

Titles of Regulations: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-280, 12VAC35-105-330 through 12VAC35-105-380, 12VAC35-105-590, 12VAC35-105-650, 12VAC35-105-660, 12VAC35-105-665, 12VAC35-105-693, 12VAC35-105-740, 12VAC35-105-1120, 12VAC35-105-1370; adding 12VAC35-105-1830 through 12VAC35-105-1950).**

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 (amending 12VAC35-115-110).

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

Effective Date: July 17, 2024.

Agency Contact: Susan Puglisi, Regulatory Research Specialist, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, Fourth Floor, Richmond, VA 23219, telephone (804) 371-2709, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

Summary:

Pursuant to Chapter 795 of the 2024 Acts of Assembly, the amendments ensure the regulations support high-quality crisis services and align the regulations with the changes being made to the Medicaid behavioral health regulations for services funded in support of the Governor's Right Help, Right Now Behavioral Health Transformation Plan. The amendments create crisis services tailored to crisis receiving centers, community-based crisis stabilization, crisis stabilization units, and regional education assessment crisis services habitation (REACH) providers and include provisions for (i) staffing, (ii) crisis assessment, (iii) safety plans and crisis individualized services plans, (iv) crisis discharge planning, (v) nursing assessment, (vi) facility physical environment, and (vii) seclusion.

12VAC35-105-20. Definitions.

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

"Abuse" means, as defined by § 37.2-100 of the Code of Virginia, any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or ~~his~~ the individual's individualized services plan; or

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with ~~his~~ the individual's individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Addiction is defined as the inability to consistently abstain, impairment in behavioral control, persistence of cravings, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response. Like other chronic diseases, addiction often involves cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"ASAM" means the American Society of Addiction Medicine.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping ~~him~~ the individual achieve his personal goals;

2. Serve as the primary provider of all the services that an individual receiving ACT services needs;

3. Maintain a high frequency and intensity of community-based contacts;

4. Maintain a very low individual-to-staff ratio;

5. Offer varying levels of care for all individuals receiving ACT services and appropriately adjust service levels according to each individual's needs over time;

6. Assist individuals in advancing toward personal goals with a focus on enhancing community integration and regaining valued roles, such as worker, family member, resident, spouse, tenant, or friend;

7. Carry out planned assertive engagement techniques, including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;

8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;

9. Deliver all services according to a recovery-based philosophy of care; and

10. Promote self-determination, respect for the individual receiving ACT as an individual in such individual's own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Board" or "state board" means, as defined by § 37.2-100 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"Brain injury" means any injury to the brain that occurs after birth that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Clinically managed high-intensity residential care" or "Level of care 3.5" means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" or "Level of care 3.1" means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed population specific high-intensity residential services" or "Level of care 3.3" means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

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

"Community-based crisis stabilization" means services that are short term and designed to support an individual and the individual's natural support system following contact with an initial crisis response service or as a diversion to a higher level of care. Providers deliver community-based crisis stabilization services in an individual's natural environment and provide referrals and linkage to other community-based services at the appropriate level of care. Interventions may include brief therapeutic and skill-building interventions, engagement of natural supports, interventions to integrate natural supports in the de-escalation and stabilization of the crisis, and coordination of follow-up services. Coordination of specialized services to address the needs of co-occurring developmental disabilities and substance use disorders are also available through this service. Services include advocacy and networking to provide linkages and referrals to appropriate community-based services and assist the individual and the individual's family or caregiver in accessing other benefits or assistance programs for which the individual may be eligible. Community-based crisis stabilization is a non-center, community-based service. The goal of community-based crisis stabilization services is to stabilize the individual within the community and support the individual or the individual's support system during the periods (i) between an initial mobile crisis response and entry into an established follow-up service at the appropriate level of care; (ii) as a transitional step-down from a higher level of care if the next level of care service is identified but not immediately available for access; or (iii) as a diversion to a higher level of care.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually ~~age~~ 65 years of age or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other ~~health-related~~ health-related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Credentialed addiction treatment professional" means a person who possesses one of the following credentials issued by the appropriate health regulatory board: (i) an addiction-credentialed physician or physician with experience or training in addiction medicine; (ii) a licensed nurse practitioner or a licensed physician assistant with experience or training in addiction medicine; (iii) a licensed psychiatrist; (iv) a licensed clinical psychologist; (v) a licensed clinical social worker; (vi) a licensed professional counselor; (vii) a licensed nurse practitioner with experience or training in psychiatry or mental health; (viii) a licensed marriage and family therapist; (ix) a licensed substance abuse treatment practitioner; (x) a resident who is under the supervision of a licensed professional counselor (18VAC115-20-10), licensed marriage and family therapist (18VAC115-50-10), or licensed substance abuse treatment practitioner (18VAC115-60-10) and is registered with the Virginia Board of Counseling; (xi) a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology (18VAC125-20-10); or (xii) a supervisee in social work who is under the supervision of a licensed clinical social worker and is registered with the Virginia Board of Social Work (18VAC140-20-10).

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis education and prevention plan" or "CEPP" means a department-approved, individualized, client-specific document that provides a concise, clear, and realistic set of supportive interventions to prevent or de-escalate a crisis and assist an individual who may be experiencing a behavioral loss of control. The goal of the CEPP is to identify problems that have arisen in the past or are emergent in order to map out strategies that offer tools for the natural support system to assist the individual in addressing and de-escalating problems in a healthy way and provide teaching skills that the individual can apply independently.

"Crisis planning team" means the team who is consulted to plan the individual's safety plan or crisis ISP. The crisis planning team consists, at a minimum, of the individual receiving services, the individual's legal guardian or authorized representative, and a member of the provider's crisis staff. The crisis planning team may include the individual's support coordinator, case manager, the individual's family, or other identified persons, as desired by the individual, such as the individual's family of choice.

"Crisis receiving center," "CRC," or "23-hour crisis stabilization" means a community-based, nonhospital facility providing short-term assessment, observation, and crisis stabilization services for up to 23 hours. This service is accessible 24 hours per day, seven days per week, 365 days per year, and is indicated when an individual requires a safe environment for initial assessment and intervention. This service includes a thorough assessment of an individual's behavioral health crisis, psychosocial needs, and supports in order to determine the least restrictive environment most appropriate for stabilization. Key service functions include rapid assessment, crisis intervention, de-escalation, short-term stabilization, and appropriate referrals for ongoing care. This distinct service may be co-located with other services such as crisis stabilization units.

"Crisis stabilization" means direct, intensive nonresidential or residential ~~direct~~ care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Crisis stabilization unit," "CSU," or "residential crisis stabilization unit" is a community-based, short-term residential treatment unit. CSUs serve as primary alternatives to inpatient hospitalization for individuals who are in need of a safe, secure environment for assessment and crisis treatment. CSUs also serve as a step-down option from psychiatric inpatient hospitalization and function to stabilize and reintegrate individuals who meet medical necessity criteria back into their communities.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

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

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental

Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or individual's authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and ~~his~~ the individual's authorized representative, as applicable, and the provider with the intent of empowering the individual and ~~his~~ the individual's authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual~~,~~ or that individual's authorized representative~~,~~ to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of ~~such~~ a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensity of service" means the number, type, and frequency of staff interventions and other services provided during treatment at a particular level of care.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are ~~at-risk~~ at risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

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

"Location" means a place where services are or could be provided.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce the presence of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medically managed intensive inpatient service" or "Level of care 4.0" means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" or "Level of care 3.7" means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided includes directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed intensive inpatient treatment program.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the legally permitted direct application of medications, as enumerated by § 54.1-3408 of the Code of Virginia, by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted opioid treatment" or "opioid treatment service" means an intervention of administering or dispensing of medications, such as methadone, buprenorphine, or naltrexone approved by the federal Food and Drug Administration for the purpose of treating opioid use disorder.

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders. Medication assisted treatment includes medications for opioid use disorder as well as medications for treatment of alcohol use disorder.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means, as defined by § 37.2-100 of the Code of Virginia, a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Mobile crisis response" means a service that is available 24 hours per day, seven days per week, 365 days per year to provide rapid response, assessment, and early intervention to individuals experiencing a behavioral health crisis. Services are deployed in real time to the location of the individual experiencing a behavioral health crisis. The purpose of this service is to (i) de-escalate the behavioral health crisis and prevent harm to the individual or others; (ii) assist in the prevention of the individual's acute exacerbation of symptoms; (iii) develop an immediate plan to maintain safety; and (iv) coordinate care and linking to appropriate treatment services to meet the needs of the individual.

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neglect" means, as defined by § 37.2-100 of the Code of Virginia, the failure by a person~~,~~ or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Office of Human Rights" means the Department of Behavioral Health and Developmental Services Office of Human Rights.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the

individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Provider" means, as defined by § 37.2-403 of the Code of Virginia, any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP ~~shall~~ does not engage in independent or autonomous practice. A QMHP ~~shall provide~~ provides ~~such~~ services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A ~~shall provide such~~ provides services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C ~~shall provide such~~ provides services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

~~"Qualified mental health professional-eligible" or "QMHP-E"~~ "Qualified mental health professional-trainee" or "QMHP-T" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who ~~must meet~~ meets at least one of the following criteria: (i) is registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an ~~associate's~~ associate degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) is licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience, ~~(~~including the 12 weeks of supervised experience~~)~~.

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others ~~whom~~ they know.

"REACH crisis therapeutic home" or "REACH CTH" means a residential home with crisis stabilization REACH service for individuals with a developmental disability and who are experiencing a mental health or behavior crisis.

"REACH mobile crisis response" means a REACH service that provides mobile crisis response for individuals with a developmental disability and who are experiencing a mental health or behavior crisis.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Regional education assessment crisis services habilitation" or "REACH" means the statewide crisis system of care that is designed to meet the crisis support needs of individuals who have a developmental disability and are experiencing mental health or behavior crisis events that put the individuals at risk for homelessness, incarceration, hospitalization, or danger to self or others.

"Residential" or "residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent and requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, and neurobehavioral services.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

~~"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, and neurobehavioral services.~~

"Residential treatment service" means providing an intensive and highly structured clinically based mental health, substance abuse, or neurobehavioral service~~, or services~~ for co-occurring disorders in a residential setting~~,~~ other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular ~~care-giver~~ caregiver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or ~~involuntary~~ involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for ~~admission~~ initial assessment.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave ~~it~~ the area.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals~~,~~ but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs.

"Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident. "Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with ~~the~~ an individual's ~~Wellness Recovery Action Plan~~ wellness plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident, whether or not the incident occurs while in the provision of a service or on the provider's premises, ~~and~~ that results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means, as defined by § 37.2-403 of the Code of Virginia, (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, medication assisted opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or

ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Signed" or "signature" means a handwritten signature, an electronic signature, or a digital signature, as long as the signer showed clear intent to sign.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

~~"State board" means, the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.~~

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services ~~that~~, which is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means, as defined by § 37.2-100 of the Code of Virginia, the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" or "Level of care 2.1" means structured treatment provided to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" or "Level of care 1.0" means a ~~center based~~ center-based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" or "Level of care 2.5" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis.

Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Telehealth" shall have the same meaning as "telehealth services" in § 32.1-122.03:1 of the Code of Virginia.

"Telemedicine" shall have the same meaning as "telemedicine services" in § 38.2-3418.16 of the Code of Virginia.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

"Written," "writing," and "in writing" include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia is or is not affixed.

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Assertive community treatment (ACT);

2. Case management;

3. Clinically managed high-intensity residential care or Level of care 3.5;

4. Clinically managed low-intensity residential care or Level of care 3.1;

5. Clinically managed population specific high-intensity residential or Level of care 3.3;

6. Community gero-psychiatric residential;

7. ~~ICF/IID~~ Community-based crisis stabilization;

8. ~~Residential crisis stabilization~~ Crisis receiving center;

9. ~~Nonresidential crisis stabilization~~ Crisis stabilization unit;

10. Day support;

11. Day treatment, ~~includes~~ including therapeutic day treatment for children and adolescents;

~~12. Emergency;~~

~~13.~~ 12. Group home and community residential;

13. ICF/IID;

14. Inpatient psychiatric;

15. Intensive in-home;

16. Medically managed intensive inpatient service or Level of care 4.0;

17. Medically monitored intensive inpatient treatment or Level of care 3.7;

18. Medication assisted opioid treatment;

19. Mental health community support;

20. Mental health intensive outpatient;

21. Mental health outpatient;

22. Mental health partial hospitalization;

23. Psychosocial rehabilitation;

24. REACH CTH;

25. REACH mobile crisis response;

~~24.~~ 26. Residential treatment;

~~25.~~ 27. Respite care;

~~26.~~ 28. Sponsored residential home;

~~27.~~ 29. Substance abuse intensive outpatient;

~~28.~~ 30. Substance abuse outpatient;

~~29.~~ 31. Substance abuse partial hospitalization;

~~30.~~ 32. Supervised living residential; and

~~31.~~ 33. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

12VAC35-105-280. Physical environment.

A. The physical environment, design, structure, furnishings, and lighting shall be appropriate to the individuals served and the services provided.

B. The physical environment shall be accessible to individuals with physical and sensory disabilities, if applicable.

C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

D. Floor surfaces and floor coverings shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions.

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F in all areas used by individuals.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of ~~100-110°F~~ 100° to 110°F. If temperatures cannot be maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.

H. Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

I. If smoking is permitted, the provider shall make provisions for alternate smoking areas that are separate from the service environment. This subsection does not apply to home-based services.

J. For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

K. This section does not apply to ~~home~~ home-based and noncenter-based or crisis services. Sponsored residential services shall certify compliance of sponsored residential homes with this section.

12VAC35-105-330. Beds.

A. The provider shall not operate more beds than the number for which its service location is licensed.

B. An ICF/IID may not have more than 12 beds at any one location. This applies to new applications for services and not to existing services or locations licensed prior to December 7, 2011.

C. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-340. Bedrooms.

A. Bedrooms shall meet the following square footage requirements:

1. Single occupancy bedrooms shall have no less than 80 square feet of floor space.

2. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per individual.

3. This subsection does not apply to community gero-psychiatric residential services.

B. No more than four individuals shall share a bedroom, except in group homes where no more than two individuals shall share a room. This does not apply to group home locations licensed prior to December 7, 2011.

C. Each individual shall have adequate private storage space accessible to the bedroom for clothing and personal belongings.

D. This section does not apply to correctional facilities and jails or crisis services. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-350. Condition of beds.

A. Beds shall be clean, comfortable, and equipped with a mattress, pillow, blankets, and bed linens. When a bed is soiled, providers shall assist individuals with bathing as needed, and provide clean clothing and bed ~~linen~~ linens. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

B. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-360. Privacy.

A. Bedroom and bathroom windows and doors shall provide privacy.

B. Bathrooms intended for use by more than one individual at the same time shall provide privacy for showers and toilets.

C. No required path of travel to the bathroom shall be through another bedroom.

D. This section does not apply to correctional facilities and jails or crisis services. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-370. Ratios of toilets, basins, and showers or baths.

For all residential and inpatient locations established, constructed, or reconstructed after January 13, 1995, there shall be at least one toilet, one hand basin, and shower or bath for every four individuals. This section does not apply to correctional facilities or jails or crisis services. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-380. Lighting.

Each service location shall have adequate lighting in halls and bathrooms at night. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals receiving services;

2. Types of services offered;

3. Service description;

4. Number of individuals to receive services at a given time; and

5. Adequate number of staff required to safely evacuate all individuals during an emergency.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.

2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.

5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.

6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation or mental health supports, shall be provided by a QMHP-A, a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. An individual who is a ~~QMHP-E~~ QMHP-T may not provide this type of supervision.

7. Supervision of developmental services shall be provided by a person with at least one year of documented experience working directly with individuals who have developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. Supervision of brain injury services shall be provided, at a minimum, by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling,

vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals receiving services in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Staff in direct care positions providing brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-650. Assessment policy.

A. The provider shall implement a written assessment policy. The policy shall define how assessments will be conducted and documented.

B. The provider shall actively involve the individual and the individual's authorized representative, if applicable, in the preparation of initial and comprehensive assessments and in subsequent reassessments. In these assessments and reassessments, the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The assessment policy shall designate employees or contractors who are responsible for conducting assessments. These employees or contractors shall have experience in working with the needs of individuals who are being assessed, the assessment tools being utilized, and the provision of services that the individuals may require.

D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments or relevant history.

E. An assessment shall be initiated prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete an initial assessment detailed enough to determine whether the individual qualifies for admission and to initiate an ISP for those individuals who are admitted to the service. This assessment shall assess immediate service, health, and safety needs, and, at a minimum, include the individual's:

1. Diagnosis;

2. Presenting needs, including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of problems;

3. Current medical problems;

4. Current medications;

5. Current and past substance use or abuse, including co-occurring mental health and substance abuse disorders; and

6. At-risk behavior to self and others.

F. A comprehensive assessment shall update and finalize the initial assessment. The timing for completion of the comprehensive assessment shall be based upon the nature and scope of the service but shall occur no later than 30 days, after admission for providers of mental health and substance abuse services and 60 days after admission for providers of developmental services. ~~It~~ The comprehensive assessment shall address:

1. Onset and duration of problems;

2. Social, behavioral, developmental, and family history and supports;

3. Cognitive functioning, including strengths and weaknesses;

4. Employment, vocational, and educational background;

5. Previous interventions and outcomes;

6. Financial resources and benefits;

7. Health history and current medical care needs, to include:

a. Allergies;

b. Recent physical complaints and medical conditions;

c. Nutritional needs;

d. Chronic conditions;

e. Communicable diseases;

f. Restrictions on physical activities, if any;

g. Restrictive protocols or special supervision requirements;

h. Past serious illnesses, serious injuries, and hospitalizations;

i. Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household; and

j. Current and past substance use, including alcohol, prescription and nonprescription medications, and illicit drugs.

8. Psychiatric and substance use issues, including current mental health or substance use needs, presence of co-occurring disorders, history of substance use or abuse, and circumstances that increase the individual's risk for mental health or substance use issues;

9. History of abuse, neglect, sexual, or domestic violence, or trauma, including psychological trauma;

10. Legal status, including authorized representative, commitment, and representative payee status;

11. Relevant criminal charges or convictions and probation or parole status;

12. Daily living skills;

13. Housing arrangements;

14. Ability to access services, including transportation needs; and

15. As applicable, and in all residential services, fall risk, communication methods or needs, and mobility and adaptive equipment needs.

G. Providers of short-term intensive services, including inpatient and crisis stabilization services, shall develop policies for completing comprehensive assessments within the time frames appropriate for those services.

H. Providers of nonintensive or short-term services shall meet the requirements for the initial assessment at a minimum. Nonintensive services are services provided in jails, nursing homes, or other locations when access to records and information is limited by the location and nature of the services. Short-term services typically are provided for less than 60 days.

I. Providers may utilize standardized state or federally sanctioned assessment tools that do not meet all the criteria of ~~12VAC35-105-650~~ this section as the initial or comprehensive assessment tools as long as the tools assess the individual's health and safety issues and substantially meet the requirements of this section.

J. Individuals who receive medication-only services shall be reassessed at least annually to determine whether there is a change in the need for additional services and the effectiveness of the medication.

K. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-660. Individualized services plan (ISP).

A. The provider shall actively involve the individual and the individual's authorized representative, as appropriate, in the development, review, and revision of a person-centered ISP. The individualized services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors.

B. The provider shall develop and implement an initial person-centered ISP for the first 60 days for developmental services or for the first 30 days for mental health and substance abuse services. This ISP shall be developed and implemented within 24 hours of admission to address immediate service, health, and safety needs and shall continue in effect until the ISP is developed or the individual is discharged, whichever comes first.

C. The provider shall implement a person-centered comprehensive ISP as soon as possible after admission based upon the nature and scope of services but no later than 30 days after admission for providers of mental health and substance abuse services and 60 days after admission for providers of developmental services.

D. The initial ISP and the comprehensive ISP shall be developed based on the respective assessment with the participation and informed choice of the individual receiving services.

1. To ensure the individual's participation and informed choice, the following shall be explained to the individual or the individual's authorized representative, as applicable, in a reasonable and comprehensible manner:

a. The proposed services to be delivered;

b. Any alternative services that might be advantageous for the individual; and

c. Any accompanying risks or benefits of the proposed and alternative services.

2. If no alternative services are available to the individual, it shall be clearly documented within the ISP, or within documentation attached to the ISP, that alternative services were not available as well as any steps taken to identify if alternative services were available.

3. Whenever there is a change to an individual's ISP, it shall be clearly documented within the ISP, or within documentation attached to the ISP that:

a. The individual participated in the development of or revision to the ISP;

b. The proposed and alternative services and their respective risks and benefits were explained to the individual or the individual's authorized representative; and

c. The reasons the individual or the individual's authorized representative chose the option included in the ISP.

E. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-665. ISP requirements.

A. The comprehensive ISP shall be based on the individual's needs, strengths, abilities, personal preferences, goals, and natural supports identified in the assessment. The ISP shall include:

1. Relevant and attainable goals, measurable objectives, and specific strategies for addressing each need;

2. Services and supports and frequency of services required to accomplish the goals, including relevant psychological, mental health, substance abuse, behavioral, medical, rehabilitation, training, and nursing needs and supports;

3. The role of the individual and others in implementing the service plan;

4. A communication plan for individuals with communication barriers, including language barriers;

5. A behavioral support or treatment plan, if applicable;

6. A safety plan that addresses identified risks to the individual or to others, including a fall risk plan;

7. A crisis or relapse plan, if applicable;

8. Target dates for accomplishment of goals and objectives;

9. Identification of employees or contractors responsible for coordination and integration of services, including employees of other agencies;

10. Recovery plans, if applicable; and

11. Services the individual elects to ~~self-direct~~ self-direct, if applicable.

B. The ISP shall be signed and dated, at a minimum, by the person responsible for implementing the plan and the individual receiving services or the individual's authorized representative in order to document agreement. If the signature of the individual receiving services or the individual's authorized representative cannot be obtained, the provider shall document attempts to obtain the necessary signature and the reason why he was unable to obtain it. The ISP shall be distributed to the individual and others authorized to receive it.

C. The provider shall designate a person who shall be responsible for developing, implementing, reviewing, and revising each individual's ISP in collaboration with the individual or individual's authorized representative, as appropriate.

D. Employees or contractors who are responsible for implementing the ISP shall demonstrate a working knowledge of the objectives and strategies contained in the individual's current ISP, including an individual's detailed health and safety protocols.

E. Providers of short-term intensive services such as inpatient and crisis services that are typically provided for less than 30 days shall implement a policy to develop an ISP within a timeframe consistent with the length of stay of individuals.

F. When a provider provides more than one service to an individual, the provider may maintain a single ISP document that contains individualized objectives and strategies for each service provided.

G. Whenever possible, the identified goals in the ISP shall be written in the words of the individual receiving services.

H. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-693. Discharge.

A. The provider shall have written policies and procedures regarding the discharge or termination of individuals from the service. These policies and procedures shall include medical and clinical criteria for discharge.

B. Discharge instructions shall be provided in writing to the individual, ~~his~~ the individual's authorized representative, and the successor provider, as applicable. Discharge instructions shall include, at a minimum, medications and dosages; names, ~~phone~~ telephone numbers, and addresses of any providers to whom the individual is referred; current medical issues or conditions; and the identity of the treating health care providers.

C. The provider shall make appropriate arrangements or referrals to all service providers identified in the discharge plan prior to the individual's scheduled discharge date.

D. The content of the discharge plan and the determination to discharge the individual shall be consistent with the ISP and the criteria for discharge.

E. The provider shall document in the individual's service record that the individual, ~~his~~ the individual's authorized representative, and ~~his~~ the individual's family members, as appropriate, have been involved in the discharge planning process.

F. A written discharge summary shall be completed within 30 days of discharge and shall include, at a minimum, the following:

1. Reason for the individual's admission to and discharge from the service;

2. Description of the individual's or the individual's authorized representative's participation in discharge planning;

3. The individual's current level of functioning or functioning limitations, if applicable;

4. Recommended procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence;

5. The status, location, and arrangements that have been made for future services;

6. Progress made by the individual in achieving goals and objectives identified in the ISP and summary of critical events during service provision;

7. Discharge date;

8. Discharge medications prescribed by the provider, if applicable;

9. Date the discharge summary was actually written or documented; and

10. Signature of the person who prepared the summary.

G. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-740. Physical examination for residential and inpatient services.

A. Providers of residential or inpatient services shall administer or obtain results of physical exams within 30 days of an individual's admission. The examination must have been conducted within one year of admission to the service. Providers of inpatient services shall administer physical exams within 24 hours of an individual's admission.

B. A physical examination shall include, at a minimum:

1. General physical condition (history and physical);

2. Evaluation for communicable diseases;

3. Recommendations for further diagnostic tests and treatment, if appropriate;

4. Other examinations that may be indicated; and

5. The date of examination and signature of a qualified practitioner.

C. Locations designated for physical examinations shall ensure individual privacy.

D. The provider shall review and ~~follow-up~~ follow up with the results of the physical examination and of any follow-up diagnostic tests, treatments, or examinations in the individual's record.

E. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-1120. Vital signs.

A. Unless the individual refuses, the provider shall take vital signs:

1. At admission and discharge;

2. Every four hours for the first 24 hours and every eight hours thereafter; and

3. As frequently as necessary, until signs and symptoms stabilize for individuals with a high-risk profile.

B. The provider shall have procedures to address situations when an individual refuses to have vital signs taken.

C. The provider shall document vital signs, all refusals and follow-up actions taken.

D. This section does not apply to crisis services as crisis services shall comply with Part VIII of this chapter.

12VAC35-105-1370. Treatment team and staffing plan.

A. ACT services are delivered by interdisciplinary teams.

1. ACT teams shall have sufficient staffing composition to meet the varying needs of individuals served by the team as required by this section. Each ACT team shall meet the following minimum position and staffing requirements:

a. Team leader. There shall be one full-time LMHP with three years of work experience in the provision of mental health services to adults with serious mental illness; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling with three years of experience in the provision of mental health services to adults with serious mental illness; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; a supervisee, in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; or one full-time registered QMHP-A with at least three years of experience in the provision of mental health services to adults with serious mental illness who was employed by the provider as a team leader prior to July 1, 2020. The team leader shall oversee all aspects of team operations and shall provide direct services to individuals in the community.

b. Nurses. ACT nurses shall be full-time employees or contractors with the following minimum qualifications: a registered nurse shall have one year of experience in the provision of mental health services to adults with serious mental illness, or a licensed practical nurse shall have three years of experience in the provision of mental health services to adults with serious mental illness.

(1) Small ACT teams shall have at least one full-time nurse, who shall be either an RN or an LPN;

(2) Medium ACT teams shall have at least one full-time RN and at least one additional full-time nurse who shall be an LPN or RN; and

(3) Large ACT teams shall have at least one full-time RN and at least two additional full-time nurses who shall be LPNs or RNs.

c. Vocational specialist. There shall be one or more full-time vocational specialist, who shall be a registered

QMHP with demonstrated expertise in vocational services through experience or education.

d. Co-occurring disorder specialist. There shall be one or more full-time co-occurring disorder specialists, who shall be a LMHP; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10; a supervisee in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10; registered QMHP; or certified substance abuse specialist (CSAC) with training or experience working with adults with co-occurring serious mental illness and substance use disorder.

e. ACT peer specialists. There shall be one full-time equivalent peer recovery specialists who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be certified as a peer recovery specialist in accordance with 12VAC35-250, or shall become certified in the first year of employment. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting each individual's recovery goals.

f. Program assistant. There shall be one full-time or two part-time program assistants with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and perform administrative support activities.

g. Psychiatric care provider. There shall be one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia or a psychiatric nurse practitioner practicing within the scope of practice as defined in 18VAC90-30-120. An equivalent ratio of 16 hours of psychiatric time per 50 individuals served must be maintained. The psychiatric care provider shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

h. Generalist clinical staff. There shall be additional clinical staff with the knowledge, skill, and ability required, based on the population and age of individuals being served, to carry out rehabilitation and support functions, at least 50% of whom shall be LMHPs, QMHP-As, ~~QMHP-Es~~ QMHP-Ts, or QPPMHs.

(1) Small ACT teams shall have at least one generalist clinical staff;

(2) Medium ACT teams shall have at least two generalist clinical staff; and

(3) Large ACT teams shall have at least three generalist clinical staff.

2. Staff-to-individual ratios for ACT Teams:

a. Small ACT teams shall maintain a caseload of no more than 50 individuals and shall maintain at least one staff member per eight individuals, in addition to a psychiatric care provider and a program assistant.

b. Medium ACT teams shall maintain a caseload of no more than 74 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

c. Large ACT teams shall maintain a caseload of no more than 120 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

B. ACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and eight hours each weekend day and each holiday.

C. The ACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily.

D. The ACT team shall operate an after-hours on-call system and shall be available to individuals by telephone and in person when needed as determined by the team.

E. ACT teams in development may submit a transition plan to the department for approval that will allow for "start-up" when newly forming teams are not in full compliance with the ACT model relative to staffing patterns and individuals receiving services capacity. Approved transition plans shall be limited to a six-month period.

Part VIII

Crisis Services

12VAC35-105-1830. Applicability of part.

All crisis receiving centers, community-based crisis stabilization, crisis stabilization units, and REACH providers shall comply with the provisions of this part.

12VAC35-105-1840. Staffing.

A. Crisis receiving centers shall meet the following staffing requirements:

1. A licensed psychiatrist or nurse practitioner shall be available to the program, either in person or via telemedicine, 24 hours per day, seven days per week;

2. An LMHP, LMHP-R, LMHP-RP, or LMHP-S shall be available for conducting assessments;

3. Nursing services shall be provided by a registered nurse (RN) or a licensed practical nurse (LPN). Nursing staff shall be available 24 hours per day, in person. LPNs shall work directly under the supervision of a physician, nurse practitioner, or RN; and

4. Medical, psychological, psychiatric, laboratory, and toxicology services shall be available by consult or referral.

B. Community-based crisis stabilization shall meet the following staffing requirements:

1. An LMHP, LMHP-R, LMHP-RP, or LMHP-S shall conduct assessments and, for any CEPP not authored by an LMHP, review, and if the LMHP, LMHP-R, LMHP-RP, or LMHP-S agrees, sign the CEPP;

2. All staff are required to utilize a working global positioning system (GPS) enabled smart phone or GPS-enabled tablet;

3. Any time staff are dispatched for the provision of mobile crisis response, the provider shall dispatch a team that meets at least one of the following staffing composition requirements:

a. If a single person is dispatched for mobile crisis response:

(1) One licensed staff member; or

(2) One certified pre-screener.

b. If the provider dispatches a team for mobile crisis, the team shall include:

(1) One licensed staff member and one peer recovery specialist (PRS);

(2) One licensed staff member and one certified substance abuse counselor (CSAC), CSAC-supervisee, or certified substance abuse counselor assistant (CSAC-A);

(3) One licensed staff member and one QMHP (QMHP-A, QMHP-C, or QMHP-T);

(4) One PRS, and either one QMHP (QMHP-A or QMHP-C) or one CSAC or CSAC-supervisee. A licensed staff member shall be required to be available via telemedicine for the assessment;

(5) One CSAC-A, and either one QMHP (QMHP-A or QMHP-C) or one CSAC or CSAC-supervisee. A licensed staff member shall be required to be available via telemedicine for the assessment;

(6) Two QMHPs (QMHP-A, QMHP-C, or QMHP-T; however, the team shall not be two QMHP-Ts). A licensed staff member shall be required to be available via telemedicine for the assessment;

(7) Two CSACs. A licensed staff member shall be required to be available via telemedicine for the assessment; or

(8) One QMHP (QMHP-A or QMHP-C), and one CSAC or CSAC-supervisee. A licensed staff member shall be required to be available via telemedicine for the assessment.

C. Crisis stabilization units shall meet the following staffing requirements:

1. A licensed psychiatrist or psychiatric nurse practitioner shall be available 24 hours per day, seven days per week either in person or via telemedicine;

2. An LMHP, LMHP-R, LMHP-RP, or LMHP-S shall be available to conduct an assessment;

3. Nursing services shall be provided by either an RN or an LPN. Nursing staff shall be available in person 24 hours per day, seven days per week. LPNs shall work directly under the supervision of a physician, nurse practitioner, or an RN; and

4. Medical, psychological, psychiatric, laboratory, and toxicology services shall be available by consult or referral.

D. REACH shall meet the staffing standards specific to its licensed services. The service shall also meet the REACH standards. A REACH crisis therapeutic home shall meet both the crisis stabilization unit standards and the REACH standards.

12VAC35-105-1850. Crisis assessment.

A. The provider shall implement a written crisis assessment policy. The policy shall define how crisis assessments will be conducted and documented.

B. The provider shall actively involve the individual and the individual's authorized representative, if applicable, in the preparation of crisis assessment. In the crisis assessment, the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The crisis assessment policy shall designate appropriately qualified employees or contractors who are responsible for conducting, obtaining, or updating assessments and medical screenings. These employees or contractors shall have experience working with the needs of individuals who are being assessed, with the crisis assessment tools being utilized and with the provision of services that the individuals may require. The crisis assessment policy shall include methods the provider will utilize to identify other appropriate services to assist individuals who are not admitted to the provider's service.

D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments or history relevant to the crisis. The provider shall use the individual's previous assessments or other relevant history within the course of treatment, if applicable, as noted within subsection F of this section.

E. Providers shall utilize standardized state-sanctioned or federally sanctioned crisis assessment tools as approved by the department or utilize their own crisis assessment tools that shall meet the requirements in subsection F of this section.

F. A crisis assessment shall be initiated prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete or obtain information from other qualified providers in order to complete a crisis assessment detailed enough to (i) determine whether the individual qualifies for admission and (ii) initiate a safety plan or crisis ISP as required by this chapter for those individuals who are admitted to the service. The crisis assessment shall assess the individual's service, health, and safety needs and, at a minimum, include:

1. For community-based crisis stabilization providers providing the mobile crisis component of the service and crisis receiving centers:

a. Diagnosis, including current and past substance use or dependence and risk for intoxication or substance withdrawal, and co-occurring mental illness or developmental disability;

b. Risk of harm, including elements that may make an individual a danger to self or others;

c. Cognitive functional status, including the individual's ability to protect from self-harm and provide for the individual’s basic human needs;

d. Precipitating issues, including recent stressors or events;

e. Presenting needs, including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of needs. The assessor shall record:

(1) Any physical reaction to the presenting crisis if these issues are mentioned by the individual or observed during the assessment. Examples include issues with sleep, appetite, or daily activities;

(2) The individual's housing arrangements and living situation if mentioned by the individual; and

(3) Any trauma, such as sexual abuse, physical abuse, or natural disaster, if appropriate, including if a trauma is related to the current crisis or mentioned by the individual;

f. Additional current medical issues and symptoms, if applicable;

g. Current medications, including recent changes to medications. The assessor shall review current medications to the best of the individual's ability;

h. Barriers that will impact the individual's ability to seek treatment or continue to participate in services, including the individual's mood, ability, and willingness to engage in treatment, and access to transportation;

i. The individual's recovery environment and circle of support; and

j. Communication modality and language preference.

2. For crisis stabilization units and community-based crisis stabilization providing services other than mobile crisis, the assessment shall also include:

a. Relevant treatment history and health history, to include as applicable:

(1) Past prescribed medications;

(2) Hospitalizations for challenging behaviors, mental illness, or substance use;

(3) Other treatments for challenging behaviors, mental illness, or substance use;

(4) Allergies, including allergies to food and medications;

(5) Recent physical complaints and medical conditions;

(6) Nutritional needs;

(7) Chronic conditions;

(8) Communicable diseases;

(9) Restrictions on physical activities, if any;

(10) Restrictive protocols or special supervision requirements;

(11) Preferred interventions in the event behaviors or symptoms become a danger to self or others;

(12) All known contraindications to the use of seclusion, time out, or any form of physical or mechanical restraint, including medical contraindications and history of trauma;

(13) Past serious illnesses, serious injuries, and hospitalizations;

(14) Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household; and

(15) Other interventions and outcomes, including interventions and outcomes that were unsuccessful. The provider should ensure previous assessments are utilized to note these interventions.

b. The individual's housing arrangements or living situation;

c. Trauma, such as sexual abuse, physical abuse, or natural disaster; and

d. Current or previous involvement in systems, such as legal, adult protective services, or child protective services.

3. If applicable to the individual's crisis, the assessment shall include:

a. The individual’s social, behavioral, developmental, and family history and supports;

b. Employment, vocational, and educational background;

c. Cultural and heritage considerations; and

d. Financial stressors, if applicable.

G. The timing for completion of the crisis assessment shall be as soon as possible after admission but no later than 24 hours after admission.

H. The provider shall retain documentation of the assessments in the individual's record for a minimum of six years following the last patient encounter, in accordance with § 54.1-2910.4 of the Code of Virginia.

12VAC35-105-1860. Safety plans and crisis individualized services plans.

A. The provider shall actively involve the individual and the individual's authorized representative, as appropriate, in the development, review, and revision of a person-centered safety plan and, if appropriate, crisis individualized services plan (crisis ISP). The individualized safety and services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors. To the extent possible, the provider shall collaborate with the individual's crisis planning team to develop, review, revise, and implement, as appropriate, the individual's safety plan or crisis ISP.

B. Providers of developmental services shall collaborate with the individual's support coordinator to develop or review, revise, and implement, as appropriate, a person-centered CEPP. A provisional CEPP shall be completed within 15 days of admission. An updated CEPP shall be completed within 45 days of admission. Developmental services providers may utilize a CEPP as an individual's safety plan, if appropriate. If a CEPP is to be used as a safety plan, the provider shall meet the deadline listed in subsection C of this section.

C. Providers of mental health and substance abuse services shall develop or review, revise, and implement, as appropriate, a person-centered safety plan immediately after admission that shall continue in effect until discharge from the provider's crisis service.

D. Providers of crisis services shall develop or review, revise, and implement a crisis ISP as soon as possible after admission but no later than 48 hours after admission and prior to discharge from the provider's crisis service. This provision does not apply to the initial mobile crisis contact or to crisis receiving centers.

E. The safety plan and crisis ISP shall be developed based on the crisis assessment with the participation and informed choice of the individual receiving services.

1. To ensure the individual's participation and informed choice, the following shall be explained to the individual or the individual's authorized representative, as applicable, in a reasonable and comprehensible manner:

a. The proposed services to be delivered;

b. Any alternative services that might be advantageous for the individual; and

c. Any accompanying risks or benefits of the proposed alternative services.

2. If no alternative services are available to the individual, it shall be documented within the individual's service record that alternative services were not available and any steps taken to identify if alternative services were available.

3. Whenever there is a change to an individual's safety plan or crisis ISP, the changes shall be documented within the safety plan or crisis ISP or within documentation attached to the safety plan or crisis ISP that:

a. The individual participated in the development of or revision to the safety plan or crisis ISP;

b. The proposed and alternative services and the respective risks and benefits of those services were explained to the individual or the individual's authorized representative; and

c. The reasons the individual or the individual's authorized representative chose the option included in the safety plan or crisis ISP.

12VAC35-105-1870. Safety plan and crisis ISP requirements.

A. All individuals receiving crisis services shall have a safety plan.

1. The safety plan shall be based on the individual's immediate service, health, and safety needs identified in the crisis assessment. The safety planning process shall be an ongoing activity. The safety plan shall include:

a. Warning signs that a crisis may be developing, such as thoughts, images, mood, situation, and behavior or stressors that may trigger the individual;

b. Internal coping strategies and things the individual can do without contacting another person, such as relaxation techniques or physical activities;

c. People and social settings that the individual may turn to for distraction or support;

d. People the individual may ask for help;

e. Professionals or agencies the individual can contact during a crisis; and

f. Things the individual can do to make the individual's environment safe.

2. The safety plan may include:

a. A description of how to support the individual when pre-crisis behaviors are observed;

b. Specific instructions for the systems supporting the individual when pre-crisis behaviors are observed;

c. A description of how to support the individual when crisis behaviors are observed; and

d. Specific instructions for the systems supporting the individual during crisis.

3. In the event an individual receiving services requires medication management or seclusion, the need shall be clearly documented in an attachment to the individual's safety plan.

B. Community-based crisis stabilization and crisis stabilization unit providers shall also develop a crisis ISP. A crisis ISP shall be based on the individual's immediate service, health, and safety needs identified in the crisis assessment. The crisis ISP shall include:

1. Relevant and attainable goals, measurable objectives to inform current and future treatment, and specific strategies for addressing each need documented within the individual's crisis assessment;

2. Services, supports, and frequency of services required to accomplish the goals, including relevant psychological, mental health, substance use, behavioral, medical, rehabilitation, training, and nursing needs and supports;

3. Any use of seclusion if allowed in the service per 12VAC35-110;

4.The role of the individual and others, including the individual's family, if appropriate, in implementing the crisis ISP;

5. Identification of employees or contractors responsible for the coordination and integration of services, including employees of other agencies;

6. A behavioral support or treatment plan, if applicable; and

7. Projected discharge plan and estimated length of stay within the service.

C. In order to document agreement, both the safety plan and the crisis ISP shall be signed and dated, at a minimum, by the person responsible for implementing the safety plan or crisis ISP and the individual receiving services or the individual's authorized representative, if appropriate.

1. If the signature of the individual receiving services or the individual's authorized representative cannot be obtained, the provider shall document attempts to obtain the necessary signature and the reason why obtaining it was not possible. The provider shall continue to make attempts to obtain the necessary signature for the length of time the safety plan or crisis ISP is in effect. An attempt to obtain the necessary signature shall occur, at a minimum, each time the provider reviews the safety plan or crisis ISP.

2. The safety plan and crisis ISP shall be distributed to the individual and others authorized to receive it. The provider shall document that the safety plan and crisis ISP were distributed within the individual's services record. If the safety plan or crisis ISP cannot be distributed, the provider shall document attempts to distribute the safety plan and crisis ISP to the individual and the reason why distribution was not possible. The provider shall continue to make attempts to distribute the safety plan and crisis ISP for the length of time the safety plan and crisis ISP are in effect. An attempt to distribute the safety plan and crisis ISP shall occur, at a minimum, each time the provider reviews the safety plan or crisis ISP.

D. The provider shall have a safety plan and crisis ISP policy that designates a staff person responsible for developing, implementing, reviewing, and revising each individual's safety plan and crisis ISP, in collaboration with the individual or the individual's authorized representative, as appropriate.

E. Employees or contractors who are responsible for implementing the safety plan or crisis ISP shall (i) have access to the individual's safety plan or crisis ISP, including an individual's detailed health and safety protocols; and (ii) be competent to implement the safety plan or crisis ISP as written.

F. Whenever possible, the identified goals in the safety plan or crisis ISP shall be written in the words of the individual receiving services.

G. The provider shall use signed and dated progress notes to document the provider's efforts toward the implementation of the goals and objectives contained within the safety plan or crisis ISP.

12VAC35-105-1880. Crisis discharge planning.

A. Crisis providers are not subject to the provisions of 12VAC35-105-693.

B. Community-based crisis stabilization providers of mobile crisis response and crisis receiving center providers shall make referrals to all follow-up service providers if determined appropriate and document in accordance with the provider's crisis assessment policy. The provider shall document such arrangements, referrals, or reasons why follow-up care was not indicated within the individual's record.

C. Community-based crisis stabilization providers, when providing mobile crisis response services, and crisis receiving centers providers are not required to provide discharge planning to individuals receiving services and, therefore, are not subject to subsections D through H of this section.

D. Community-based crisis stabilization providers, crisis stabilization units, and REACH providers shall have written policies and procedures regarding the discharge or termination of individuals from the service. These policies and procedures shall include medical and clinical criteria for discharge.

E. Discharge instructions shall be provided in writing to the individual, the individual's authorized representative, and any successor provider, as applicable. Discharge instructions shall include, at a minimum, medications and dosages; names, telephone numbers, and addresses of any providers to whom

the individual is referred; current medical issues or conditions; and the identity of the treating health care providers. The provider shall make appropriate referrals to all service providers identified within the individual's discharge instructions prior to the individual's scheduled discharge date.

F. The provider shall document in the individual's service record whether the individual, the individual's authorized representative, and the individual's family members, as appropriate, were involved in the discharge planning process.

G. A written discharge summary shall be completed within 30 days of discharge and shall include, at a minimum, the following:

1. The reason for the individual's admission to and discharge from the service;

2. A description of the individual's and the individual's authorized representative's participation in discharge planning and documentation of informed choice by the individual, the individual's authorized representative, or the individual's legal guardian, as applicable, in the decision to and planning for discharge;

3. The individual's current level of functioning or functioning limitations, if applicable;

4. Recommended procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence;

5. The status, location, and arrangements that were made for future services;

6. Progress made by the individual in achieving goals and objectives identified in the crisis ISP and summary of critical events during service provision;

7. Discharge date;

8. Any discharge medications prescribed by the provider, if applicable;

9. Dates the discharge plan was written and documented; and

10. The signature of the person who prepared the discharge plan.

H. The content of the discharge summary and the determination to discharge the individual shall be consistent with the crisis ISP and the criteria for discharge.

12VAC35-105-1890. Nursing assessment.

A. Crisis receiving centers, crisis stabilization units, and REACH CTH providers shall administer a nursing assessment within 24 hours of admission of an individual.

B. Prior to admission, each individual shall have a screening for communicable diseases, including tuberculosis, as evidenced by the completion of a screening form containing, at a minimum, the elements found on the Report of Tuberculosis Screening form published by the Virginia Department of Health. The screening shall be no older than 30 days. No screening shall be required for a new individual separated from a service with another licensed provider with a break in service of six months or less or who is transferred from another department-licensed provider.

C. A staff member shall conduct a nursing assessment. The nursing assessment shall collect information about the nonpsychiatric medical or surgical condition of an individual to determine whether there is a need for a medical assessment before a decision is made regarding continued treatment within the provider's service or transfer to a more intensive level of care. The nursing assessment shall determine if there is a current medical crisis or underlying medical condition for the individual's psychological crisis, such as any medical condition that affects the individual's psychological state, presenting behavior, or ability to receive the provider's service. The nursing assessment shall note the date of examination and have the signature of a qualified practitioner.

D. Locations designated for nursing assessments shall ensure individual privacy.

E. The provider shall review and follow up with (i) the results of the nursing assessment, including any follow-up diagnostic tests, treatments, or examinations, and (ii) documentation of the arrangements for follow-up care in the individual's record.

F. Each individual's health record shall include notations of any health or dental complaints mentioned by the individual or any injuries and shall summarize symptoms and treatment given.

G. Each individual's health record shall include or document the facility's efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports.

H. The provider shall develop and implement written policies and procedures that include the use of standard precautions and address communicable and contagious medical conditions.

I. Community-based crisis stabilization providers are not required to administer nursing assessments. The provider may administer a nursing assessment if the provider has the resources to do so or may obtain a medical history or relevant information that would be a part of a medical history if the individual receiving services provides it.

12VAC35-105-1900. Vital signs for crisis services.

A. This section applies to all crisis receiving centers, crisis stabilization units, and REACH CTH providers.

B. Unless the individual refuses, the provider shall take vital signs upon admission, during the provision of services as per the medical provider's orders, and at discharge.

C. The provider shall implement written procedures regarding the collection of vital signs, including documentation of vital signs, all refusals, and all follow-up actions taken.

12VAC35-105-1910. Beds or recliners for crisis services.

A. For the purpose of this section, "clean" means freshly laundered, sanitized, and not soiled or stained.

B. Crisis receiving center providers shall arrange for each individual to have a recliner or bed. Crisis stabilization unit and REACH CTH providers shall arrange for each individual to have a bed.

C. Upon admission, the provider shall offer to launder the individual's clothes.

D. The provider shall not operate more recliners or beds at each service location than the number for which its service is licensed at that location.

E. Recliners, beds, and linens shall be clean, comfortable, and well-maintained.

F. Beds shall be equipped with a clean mattress, and recliners shall be equipped with clean cushions. Beds and recliners shall be equipped with a clean pillow, clean blankets, and clean linens. When a bed or recliner is soiled, providers shall assist individuals with bathing, as needed, and provide clean clothing and clean linens, including a clean waterproof mattress cover for a bed.

G. Providers shall change linens at least every seven days and with each new admission.

H. Providers shall provide mattresses that are fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

I. Providers shall inspect each individual's recliner or bed upon discharge to (i) ensure the individual has all personal belongings and (ii) prepare the recliner or bed for cleaning.

12VAC35-105-1920. Bedrooms for crisis services.

A. This section only applies to crisis stabilization units and REACH CTH providers.

B. Bedrooms shall meet the following square footage requirements:

1. Single occupancy bedrooms shall have no less than 80 square feet of floor space.

2. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per individual.

C. No more than four individuals shall share a bedroom.

D. Bedrooms shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices that may cause injury to the individual.

E. Windows in the bedrooms shall be so constructed as to minimize breakage and otherwise prevent the individual from self-harming.

F. Each individual shall have adequate private storage space accessible to the bedroom for clothing and personal belongings.

G. Each sleeping area shall have a door that can be (i) closed for privacy or quiet and (ii) readily opened in case of fire or other emergency.

H. The environment of sleeping areas shall be conducive to sleep and rest.

I. Providers of children's residential services shall provide separate sleeping areas for boys and girls four years of age or older.

J. Providers of children's residential services shall ensure beds are at least three feet apart at the head, foot, and sides, and double-decker beds shall be at least five feet apart at the head, foot, and sides.

12VAC35-105-1930. Physical environment for crisis services.

A. The physical environment, design, structure, furnishings, and lighting shall be appropriate to the individuals receiving services and the services provided.

B. The physical environment shall be accessible to individuals with physical and sensory disabilities.

C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

D. Floor surfaces and floor coverings shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions. There shall be clear pathways through the setting, free of tripping hazards, to ensure that all individuals can move about the setting safely.

Any electrical cords, extension cords, or power strips utilized by the provider shall be properly secured and shall not be placed anywhere that the cord or strip can cause trips or falls.

E. Heat shall be evenly distributed in all rooms occupied by individuals such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents. Individual or mechanical ventilating systems shall be provided in all rooms occupied by individuals when the temperature in those rooms exceeds 80°F.

F. Plumbing shall be maintained in good operational condition. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals receiving services shall be maintained within a range of 100° to 120°F. Precautions shall be taken to prevent scalding from running water.

G. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

H. The physical environment, structure, furnishings, and lighting shall be kept free of vermin, rodents, insects, and other pests.

I. If smoking is permitted, the provider shall make provisions for alternate smoking areas that are separate from the service environment.

J. For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

K. Bedroom, bathroom, and dressing area windows and doors shall provide privacy.

L. Bathrooms intended for use by more than one individual at the same time shall provide privacy for showers and toilets.

M. The right of privacy within bathrooms includes the right to be free of cameras or audio monitors within the bathroom or angled toward a bathroom.

N. Bedrooms and bathrooms shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices that may cause injury to the individual. Windows in the bathrooms shall be so constructed as to minimize breakage and otherwise prevent the individual from self-harming.

O. No required path of travel to the bathroom shall be through another bedroom. Each individual's room shall have direct access to a corridor, living area, dining area, or other common area.

P. Each provider shall make available at least one toilet, one hand basin, and a shower or bath for every four individuals. Providers of children's residential services shall:

1. Make available at least one toilet, one hand basin, and one shower or bathtub in each living unit;

2. Make available at least one bathroom equipped with a bathtub in each facility;

3. Make available at least one toilet, one hand basin, and one shower or bathtub for every eight individuals for facilities licensed before July 1, 1981;

4. Make available one toilet, one hand basin, and one shower or bathtub for every four individuals in any building constructed or structurally modified after July 1, 1981. Facilities licensed after December 28, 2007, shall comply with the one-to-four ratio; and

5. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

Q. If a provider utilizes cameras or audio monitors, the provider shall have written policies and procedures regarding audio or audio-video recordings of individuals receiving services approved by the Office of Licensing and the Office of Human Rights. The policies and procedures shall ensure and provide that:

1. The provider has obtained written consent of the individual before the individual is recorded;

2. No recording by the provider shall take place without the individual being informed;

3. The provider has postings informing individuals receiving services and others that recording is taking place; and

4. All recordings shall be used in a manner that respects the dignity and confidentiality of the individuals receiving services.

R. A provider shall develop and implement written policies and procedures approved by the Office of Licensing governing searches that shall provide that:

1. Searches shall be limited to instances where they are necessary to prohibit contraband;

2. Searches shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures;

3. Searches shall be conducted in such a way to protect the individual's dignity and in the presence of one or more witnesses; and

4. The policies and procedures shall note the actions to be taken by a provider if contraband is found by a search, including methods to manage and dispose of contraband.

S. Providers who serve temporary detention orders or emergency custody orders shall ensure the program is provided in a secure facility or a secure program space.

T. Providers shall provide privacy from routine sight supervision by staff members while bathing, dressing, or conducting toileting activities. This subsection does not apply to medical personnel performing medical procedures or staff providing assistance to individuals whose physical, mental, or safety needs dictate the need for assistance with these activities as justified in the individual's record.

12VAC35-105-1940. Seclusion.

Seclusion is only allowed as permitted by 12VAC35-115 and other applicable state regulations.

12VAC35-105-1950. Seclusion room requirements.

The room used for seclusion of persons shall meet the following design requirements:

1. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

2. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices that may cause injury to the occupant.

3. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from self-harming.

4. Light fixtures and other electrical receptacles in the seclusion room shall be recessed or so constructed as to prevent the occupant from self-harming. Light controls shall be located outside the seclusion room.

5. Doors to the seclusion room shall be at least 32 inches wide, open outward, and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for someone outside the door to see into all corners of the room.

6. The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

7. The seclusion room shall maintain temperatures appropriate for the season.

8. All space in the seclusion room shall be visible through the locked door, either directly or by mirrors.

12VAC35-115-110. Use of seclusion, restraint, and time out.

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, or time out.

B. The voluntary use of mechanical supports to achieve proper body position, balance, or alignment so as to allow greater freedom of movement or to improve normal body functioning in a way that would not be possible without the use of such a mechanical support, and the voluntary use of protective equipment are not considered restraints.

C. The provider's duties.

1. Providers shall meet with the individual or ~~his~~ the individual's authorized representative upon admission to the service to discuss and document in the individual's services record his preferred interventions in the event his behaviors or symptoms become a danger to himself or others and under what circumstances, if any, the intervention may include seclusion, restraint, or time out.

2. Providers shall document in the individual's services record all known contraindications to the use of seclusion, time out, or any form of physical or mechanical restraint, including medical contraindications and a history of trauma, and shall flag the record to alert and communicate this information to staff.

3. ~~Only~~ Seclusion may be used only in an emergency and only in facilities operated by the department; 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~~; and crisis receiving centers or crisis stabilization units that are licensed under Part VIII (12VAC35-105-1830 et seq.) of 12VAC35-105.

4. Providers shall not use seclusion, restraint, or time out as a punishment or reprisal or for the convenience of staff.

5. Providers shall not use seclusion or restraint solely because criminal charges are pending against the individual.

6. Providers shall not use a restraint that places the individual's body in a prone (face down) position.

7. Providers shall not use seclusion or restraint for any behavioral, medical, or protective purpose unless other less restrictive techniques have been considered and documentation is placed in the individual's safety plan, the crisis ISP, or the ISP that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency.

8. Providers that use seclusion, restraint, or time out shall develop written policies and procedures that comply with applicable federal and state laws and regulations, accreditation and certification standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include at least the following requirements:

a. Individuals shall be given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and to bathe as needed.

b. Trained, qualified staff shall monitor the individual's medical and mental condition continuously while the restriction is being used.

c. Each use of seclusion, restraint, or time out shall end immediately when criteria for removal are met.

d. Incidents of seclusion and restraint, including the rationale for and the type and duration of the restraint, shall be reported to the department as provided in 12VAC35-115-230 C.

9. Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint.

a. Whenever an inconsistency exists between this chapter and federal laws or regulations, accreditation or certification standards, or the requirements of third party payers, the provider shall comply with the higher standard.

b. Providers shall notify the department whenever a regulatory, accreditation, or certification agency or third party payer identifies problems in the provider's compliance with any applicable seclusion and restraint standard.

10. Providers shall ensure that only staff who have been trained in the proper and safe use of seclusion, restraint, and time out techniques may initiate, monitor, and discontinue their use.

11. Providers shall ensure that a qualified professional who is involved in providing services to the individual reviews every use of physical restraint as soon as possible after it is carried out and documents the results of his review in the individual's services record.

12. Providers shall ensure that review and approval by a qualified professional for the use or continuation of restraint for medical or protective purposes is documented in the individual's services record. Documentation includes:

a. Justification for any restraint;

b. Time-limited approval for the use or continuation of restraint; and

c. Any physical or psychological conditions that would place the individual at greater risk during restraint.

13. Providers may use seclusion or mechanical restraint for behavioral purposes in an emergency only if a qualified professional involved in providing services to the individual has, within one hour of the initiation of the procedure:

a. Conducted a face-to-face assessment of the individual placed in seclusion or mechanical restraint and documented that alternatives to the proposed use of seclusion or mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;

b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;

c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;

d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and

e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's right to a fair review of whether the mechanical restraint or seclusion was permissible.

14. Providers shall limit each approval for restraint for behavioral purposes or seclusion to four hours for individuals age 18 and older, two hours for children and adolescents ages nine through 17, and one hour for children under age nine.

15. Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes.

16. Providers shall ensure that no individual is in time out for more than 30 minutes per episode.

17. Providers shall monitor the use of restraint for behavioral purposes or seclusion through continuous face-to-face observation, rather than by an electronic surveillance device.

D. For purposes of this section, "safety plan," "crisis individualized services plan," or "crisis ISP" shall have the same meaning as those terms are described in 12VAC35-105-1860 and 12VAC35-105-1870.

VA.R. Doc. No. R24-7796; Filed May 24, 2024, 1:07 p.m.

Final Regulation

Title of Regulation: **12VAC35-230. Operation of the Individual and Family Support Program (amending 12VAC35-230-10, 12VAC35-230-20, 12VAC35-230-90, 12VAC35-230-100, 12VAC35-230-110; adding 12VAC35-230-31, 12VAC35-230-35, 12VAC35-230-45, 12VAC35-230-55, 12VAC35-230-65, 12VAC35-230-75, 12VAC35-230-85; repealing 12VAC35-230-30, 12VAC35-230-40, 12VAC35-230-50, 12VAC35-230-60, 12VAC35-230-70, 12VAC35-230-80).**

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

Effective Date: July 17, 2024.

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

Summary:

Pursuant to Item 313 NN of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the amendments change the current distribution of annual Individual and Family Support Program (IFSP) funds from a first-come, first-served basis to one based on program categories and set criteria developed through an annual public input process that includes a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. The amendments establish (i) eligibility criteria, (ii) the award process, (iii) the appeals process, and (iv) other protocols necessary for ensuring the effective use of state funds.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

12VAC35-230-10. Definitions.

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

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

"Custodial family member" means a family member who has primary authority to make all major decisions affecting the individual and with whom the individual primarily resides.

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

"Developmental disability" or "DD" means a severe, chronic disability of an individual that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments, other than a sole diagnosis of mental illness;

2. Is manifested before the individual ~~attains age~~ reaches 22 years of age;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; ~~and~~ or (vii) economic self-sufficiency; and

5. Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. ~~(42 USC § 15002)~~

An individual from birth to age nine years, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in subdivisions 1 through 5 of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Family member" means an immediate family member of an individual receiving services or the principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services. (§ 37.2-100 of the Code of Virginia)

~~"Individual and Family Support" means an array of individualized items and services that are intended to support the continued residence of an individual with intellectual or developmental disabilities (ID/DD) in his own or the family home.~~

~~"Intellectual disability" or "ID" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (§ 37.2-100 of the Code of Virginia)~~

"Individual and Family Support Program" or "IFSP" means an array of individualized person-centered and family-centered resources, supports, items, services, and other assistance approved by the department that are intended to support the continued residence of individuals with developmental disabilities who are on the waiting list for a Medicaid Home and Community-Based Services Developmental Disability Waiver in each individual's own home or the family home, which includes the home of the principal caregiver.

"Individual and Family Support Program State Council" or "IFSP State Council" means an advisory group of stakeholders selected by the department that shall provide consultation to the department on creating a family support program intended to increase the resources and supports for individuals and families and promote community engagement and coordination. The IFSP State Council shall include individuals with DD and family members of individuals with DD.

"Medicaid HCBS DD Waiver" means a Medicaid Home and Community-Based Services Developmental Disability Waiver.

12VAC35-230-20. Program description.

A. The Individual and Family Support Program assists individuals with ~~intellectual disability or~~ developmental disabilities and their family members to access needed person-centered and family-centered resources, supports, services, and other assistance ~~as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member.~~ ~~B.~~ The overall objective of the Individual and Family Support Program is to support the continued residence of ~~an individual~~ individuals with ~~intellectual or~~ developmental disabilities in ~~his~~ each individual's own home or the family home, which ~~include~~ includes the home of a principal caregiver.

B. The department shall administer the IFSP funding awards directly or through a third party designated by the department to administer all or part of the IFSP, based on annual funding priorities and program criteria developed by the department in consultation with the department's IFSP State Council.

C. ~~Individual and Family Support Program~~ IFSP funds shall be distributed directly to the requesting individual or custodial family member or a third party designated by the individual or custodial family member. IFSP funds shall not supplant or in any way limit the availability of services provided through ~~a~~ Medicaid ~~Home and Community Based Waiver; Early and~~

~~Periodic Screening, Diagnosis, and Treatment; or similar~~ programs.

12VAC35-230-30. ~~Program eligibility requirements.~~ (Repealed.)

~~Eligibility for Individual and Family Support Program funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Support (IFDDS) Medicaid Waiver and family members who are assisting those individuals.~~

12VAC35-230-31. Community coordination.

The department shall:

1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid HCBS DD Waiver in community settings and includes a survey of needs and satisfaction.

2. Establish the IFSP State Council.

3. Develop, in coordination with the IFSP State Council, a strategic plan that is consistent with this chapter and the purpose of the IFSP and that is updated as necessary as determined by the department.

4. Provide technical assistance to individuals or family members to facilitate an individual's or a family member's access to covered services and supports listed in 12VAC35-230-55 that are intended to enhance or improve the individual's or family member's quality of life and promote the independence and continued residence of an individual with DD in the individual's own home or the family home, which includes the home of a principal caregiver.

12VAC35-230-35. Program eligibility requirements and policies.

A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a Medicaid HCBS DD Waiver and their custodial family members who are assisting those individuals.

B. The department, based on information gathered through public input and in consultation with the IFSP State Council, shall annually establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures used by the department for determining funding awards shall be published annually in draft form for public comment and in final form prior to opening the funding opportunity using the Virginia Regulatory Town Hall and the Virginia Register of Regulations.

C. For each funding period, the department shall base funding awards on the following published information:

1. Criteria for prioritized funding categories;

2. A summary of allowable expenditures;

3. Application deadlines; and

4. Award notification schedules.

D. All procedures used by the department for funding awards shall be reviewed annually.

12VAC35-230-40. ~~Program implementation.~~ (Repealed.)

~~A. Individual and Family Support Program funds shall be limited by the amount of funds allocated to the program by the General Assembly. Department approval of funding requests shall not exceed the funding available for the fiscal year.~~

~~B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.~~

~~C. Individual and Family Support Program funds may be provided to individuals or family members in varying amounts, as requested and approved by the department, up to the established annual individual financial support limit.~~

~~D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.~~

~~E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first-come, first-served basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.~~

~~F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.~~

12VAC35-230-45. Program implementation.

A. IFSP funds shall be limited by the amount of funds allocated to the IFSP by the General Assembly. The department approval of funding requests shall not exceed the funding available for the fiscal year. Based on information gathered through relevant data and public input, and in collaboration with the IFSP State Council, the department shall establish annual funding categories.

B. IFSP funds may be provided to individuals or custodial family members in varying amounts, as determined by the department's annually prioritized funding categories.

12VAC35-230-50. ~~Covered services and supports.~~ (Repealed.)

~~Services and items funded through the Individual and Family Support Program are intended to support the continued residence of an individual in his own or the family home and may include:~~

~~1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management;~~

~~2. Assistive technology and home modifications, goods, or products that directly support the individual;~~

~~3. Temporary rental assistance or deposits;~~

~~4. Fees for summer camp and other recreation services;~~

~~5. Temporary assistance with utilities or deposits;~~

~~6. Dental or medical expenses of the individual;~~

~~7. Family education, information, and training;~~

~~8. Peer mentoring and family-to-family supports;~~

~~9. Emergency assistance and crisis support; or~~

~~10. Other direct support services as approved by the department.~~

12VAC35-230-55. Covered services and supports.

Services and items funded through the IFSP, as published annually, using the Virginia Regulatory Town Hall and the Virginia Register of Regulations, in accordance with this chapter, are intended to support the continued residence of an individual in that individual's own home or the family home and may be approved in the following three main categories: (i) safe community living, (ii) improved health outcomes, and (iii) community integration. No services or items shall be funded by the IFSP if not listed in the department's procedures or if covered by another entity.

12VAC35-230-60. ~~Application for funding.~~ (Repealed.)

~~A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds shall submit a completed application to the department.~~

~~B. Completed applications shall include the following information:~~

~~1. A detailed description of the services or items for which funding is requested;~~

~~2. Documentation that the requested services or items are needed to support the continued residence of the individual with ID/DD in his own or the family home and no other public funding sources are available;~~

~~3. The requested funding amount and frequency of payment; and~~

~~4. A statement in which the individual or family member:~~

~~a. Agrees to provide the department with documentation to establish that the requested funds were used to purchase only approved services or items; and~~

~~b. Acknowledges that failure to provide documentation that the requested funds were used to purchase only approved services or items may result in recovery of such funds and denial of subsequent funding requests.~~

~~C. The application shall be signed by the individual or family member requesting the funding.~~

12VAC35-230-65. Application for funding.

A. Eligible individuals or custodial family members who choose to apply for IFSP funds shall submit a completed application to the department.

B. Completed applications shall include the following information:

1. A description of the services or items for which funding is requested;

2. Acknowledgment that the requested services or items are needed to support the continued residence of the individual with DD in that individual's own home or the family home and no other public funding sources are available;

3. The requested funding amount; and

4. A statement in which the individual or custodial family member:

a. Agrees to provide to the department, if requested, documentation that the requested funds were used to purchase only services or items described in the application and approved by the department; and

b. Acknowledges that failure to provide documentation, when requested, that the funds applied for were used to purchase only services or items described in the application and approved by the department may result in recovery of such funds and denial of subsequent funding requests.

C. The application shall be signed by the individual or custodial family member requesting the funding.

12VAC35-230-70. ~~Application review criteria.~~ (Repealed.)

~~Upon receipt of a completed application, the department shall:~~

~~1. Verify that the individual is on the statewide ID or IFDDS Medicaid Waiver waiting list;~~

~~2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with 12VAC35-230-50;~~

~~3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home;~~

~~4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items;~~

~~5. Evaluate the cost of the requested services or items; and~~

~~6. Consider past performance of the individual and family members regarding compliance with this chapter.~~

12VAC35-230-75. Reporting.

A. For each funding period, the department shall develop and publish a summary, using the Virginia Regulatory Town Hall and the Virginia Register of Regulations, that details the total dollar amount of funded awards, a summary of expenditure requests, the number of applications received, and the number of applications and individuals approved for receipt of IFSP funds.

B. The department, with input from the IFSP State Council, shall develop an annual summary of accomplishments toward meeting the goals of the Virginia State Plan to Increase Individual and Family Supports.

12VAC35-230-80. ~~Funding decision-making process.~~ (Repealed.)

~~A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.~~

~~B. Applications shall be denied if the department determines that:~~

~~1. The service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50;~~

~~2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;~~

~~3. Other viable public funding sources have not been fully explored or utilized;~~

~~4. The requesting individual or family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or~~

~~5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year.~~

~~C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.~~

~~1. Approval notices shall include:~~

~~a. The services, supports, or other items for which funding is approved;~~

~~b. The amount and time frame of the financial allocation;~~

~~c. The expected date that the funds should be released; and~~

~~d. Financial expenditure documentation requirements, and the date or dates by which this documentation shall be provided to the department.~~

~~2. For applications where funding is denied or approved at a reduced amount, the department's notice shall state the reason or reasons why the requested services, supports, or other items were denied or were approved at a reduced amount and the process for requesting the department to reconsider its funding decision.~~

12VAC35-230-85. Funding decision-making process.

A. Applications shall be denied if the department determines that the service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-55, other public funding sources are available, or the total annual IFSP funding appropriated by the General Assembly has been expended for the applicable fiscal year.

B. Additionally, applications for IFSP funds may be denied if the requesting individual or custodial family member has not used previously received IFSP funds in accordance with the department's written notice approving the request or has failed to comply with this chapter.

C. The department shall provide a written notice to the individual or custodial family member who submitted the application indicating the funding decision, including the reason for denial of funding, if applicable.

12VAC35-230-90. Requests for reconsideration.

A. Individuals or custodial family members who disagree with the determination of the department may submit a written request for reconsideration to the commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ within 30 days of the date of the written notice of denial or approval at a reduced amount.

B. The commissioner~~,~~ or ~~his~~ the commissioner's designee~~,~~ shall provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the funding should be approved as originally requested.

C. The commissioner~~,~~ or ~~his~~ the commissioner's designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all involved parties in writing. The ~~commissioner's~~ decision shall be binding.

D. Applicants may obtain further review of the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-230-100. Post-funding review.

A. Utilization review of documentation or verification of funds expended may be undertaken by department staff. Reviews may include home visits to view items purchased or services delivered.

B. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall permit the department representatives to conduct utilization reviews, including home visits.

C. Individuals and family members receiving ~~Individual and Family Support Program~~ IFSP funds shall fully cooperate with such reviews and provide all information requested by the department.

D. Failure to use funds in accordance with the ~~department's written notice~~ procedures for funding awards or provide documentation, if requested, that the funds were used to purchase only approved services or items as described in the application and approved by the department may result in recovery of such by the department.

12VAC35-230-110. Termination of funding for services, supports, or other assistance.

Funding through the ~~Individual and Family Support Program~~ IFSP shall be terminated when the individual is enrolled in ~~the ID or IFDDS~~ a Medicaid HCBS DD Waiver if the individual is found to be no longer eligible to be on a waiting list for a Medicaid HCBS DD Waiver in accordance with 12VAC30-122-90 and any appeal has been exhausted [,] or if approved funds are used for purposes not approved by the department in its written notice. ~~Any~~ In such circumstance, any funds approved~~,~~ but not yet released~~, will be forfeited in such circumstances~~ shall not be disbursed.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (12VAC35-230)

Individual and Family Support Program Funding Application online application available at the Virginia Waiver Management System (WaMS) Portal at https://www.dbhds.virginia.gov/waitlistforms

VA.R. Doc. No. R23-4560; Filed May 22, 2024, 3:29 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Titles of Regulations: **18VAC65-20. Regulations Governing the Practice of Funeral Services.**

18VAC65-40. Regulations for the Funeral Service Internship Program.

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Henrico, VA 23238, telephone (804) 367-4468, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC65-20)

~~Checklist and Instructions for Funeral License (rev. 3/2023)~~

Checklist, Instructions, and Application for a Funeral License by Examination or Endorsement (rev. 4/2024)

Funeral Service Licensee Reinstatement Application (rev. 3/2023)

Application for Reactivation (Inactive to Active) of Funeral Service, Funeral Director, or Embalmer License (rev. 1/2024)

Request for Verification of a Virginia Funeral License (rev. 11/2019)

Checklist and Instructions for Courtesy Card Application (rev. 3/2023)

Checklist and Instructions for Surface Transportation and Removal Service Registration Application (rev. 3/2023)

Crematory Registration Application (rev. 8/2023)

Checklist and Instructions for Continuing Education Providers (rev. 3/2021)

Instructions for Completing the Continuing Education Summary Form for the Virginia Board of Funeral Directors and Embalmers (rev. 8/2016)

Instructions for Continuing Education Providers Adding Additional Courses (rev. 3/2021)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

Continued Competency Activity and Assessment Form (rev. 7/2012)

Funeral Service New Establishment Application (rev. 3/2023)

Funeral Service Establishment/Branch Application (rev. 3/2023)

Funeral Service Branch Establishment Application (rev. 3/2023)

Funeral Service Establishment/Branch Change Application (rev. 3/2023)

Funeral Establishment or Branch Change of Manager Application (rev. 3/2023)

Request for Reinspection due to Structural Change to Preparation Room (rev. 7/2020)

Waiver of Full-Time Manager (rev. 3/2023)

Funeral Service Establishment Reinstatement Application (rev. 3/2023)

Courtesy Card Reinstatement Application (rev. 3/2023)

Surface Transportation and Removal Services Reinstatement Application (rev. 3/2023)

Presentation Request Form (rev. 7/2020)

Name/Address Change Form (rev. 2/2016)

Appendix I. General Price List (rev. 10/2019)

Appendix II. Casket Price List, Outer Burial Container Price List (rev. 10/2019)

Appendix III. Itemized Statement of Funeral Goods and Services Selected (rev. 10/2019)

FORMS (18VAC65-40)

Funeral Supervisor Registration Application (rev. 3/2023)

Funeral Change of Supervisor Application (rev. 3/2023)

~~Checklist and Instructions for Registration for Funeral Service Internship Program (rev. 3/2023)~~

~~Checklist and Instructions for Registration for Funeral Directing Internship Program (rev. 3/2023)~~

~~Checklist and Instructions for Registration for Embalming Internship Program (rev. 3/2023)~~

Checklist, Instructions, and Registration Application for Funeral Service Internship Program (rev. 4/2024)

Checklist, Instructions, and Registration Application for Funeral Directing Internship Program (rev. 4/2024)

Checklist, Instructions, and Registration Application for Funeral Embalming Internship Program (rev. 4/2024)

First 1000 Hour Funeral Service Internship Report – Funeral Directing (rev.1/2021)

Second 1000 Hour Funeral Service Internship Report – Funeral Directing (rev. 1/2021)

Funeral Service Internship Report of Final Completion – Funeral Directing (rev. 1/2021)

First 1000 Hour Embalming Internship Report (rev. 1/2021)

Second 1000 Hour Embalming Internship Report (rev. 1/2021)

Embalming Internship Report of Final Completion (rev. 1/2021)

Funeral Intern Reinstatement Application (rev. 3/2023)

VA.R. Doc. No. R24-7932; Filed May 28, 2024, 2:36 p.m.

BOARD OF PHARMACY

Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-555).**

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

Public Hearing Information:

June 25, 2024 - 9:06 a.m. - Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room Four, Henrico, Virginia 23233.

Public Comment Deadline: August 16, 2024.

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

Basis: Regulations of the Board of Pharmacy are promulgated under § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: The board determined that the petitioner correctly identified a potential hazard in the storage of stat or emergency use medications under 18VAC110-20-540 or 18VAC110-20-550. Stat or emergency use drugs stored in an automatic dispensing device (ADD) would contain an electronic record of access to those drugs, while the current tackle-box style storage systems do not. For some facilities, such as nursing homes, ADDs are not used because the only drugs stored on the premises are stat or emergency use medication. Patient and drug security may be increased through utilization of ADDs when exempted from certain requirements that would unacceptably delay the administration of life-saving drugs for patients.

Additionally, the change as adopted by the board treats stat drugs and drugs that would be kept in an emergency drug kit

the same in that the drugs may be accessed prior to receiving electronic authorization from the pharmacist. Under current language, stat drugs are treated differently from drugs that would be in an emergency drug kit when these drugs are stored in an ADD. Drugs that would be in an emergency drug kit may be accessed prior to receiving electronic authorization from the pharmacist, while stat drugs may not.

Substance: The amendments remove the reference to drugs that would be stocked in a stat drug box from the requirements of subdivision 4 a of 18VAC110-20-555. Subdivision 4 c of 18VAC110-20-555 is amended to include drugs that would be included in a stat drug box, thereby treating drugs that would be contained in a stat drug box the same as drugs that would be kept in an emergency kit.

Issues: The primary advantage to the public is security of the drug supply in that diversion of stat-use or emergency medications will be less likely while preserving quick access to these medications. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

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 and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking,[2] the Board of Pharmacy (board) proposes to allow nursing homes to use stat drugs from an automated dispensing device (ADD), prior to receiving electronic authorization from the pharmacist, provided that delay in use of the drug could harm the patient.

Background. Generally, nursing homes contract with a pharmacy for the drugs their residents need. The traditional delivery of drugs from the pharmacy to the nursing home is usually accomplished by a courier service with which the pharmacy contracts. The courier service delivery could either be on a regular schedule, or also on demand, depending on the urgency of the need. In addition, the pharmacy always makes a stat box and an emergency box of drugs available at the nursing home. Stat drugs are those in which a delay in initiating therapy may result in harm to the patient such as antibiotics; and emergency drugs are those used for life threatening emergencies, such as an inhaler. The stat and emergency drug boxes are traditionally similar to tackle-boxes secured with a plastic seal. The pharmacy restocks these boxes by replacing opened kits with sealed kits on a regular basis. Both containers are sealed and contain drugs that have already been prescribed for the patient,[3] but their presence in a nursing home allows therapy to be initiated "prior to the receipt of ordered drugs from the pharmacy." As an alternative to these boxes, stat or emergency drugs may be made available at nursing homes through an ADD. The use of ADDs in nursing homes for dispensing drugs has become increasingly more common. An ADD is a secured dispensing machine about the size of a small refrigerator with electronic connectivity to the pharmacy. The regulation already allows ADDs to be used in nursing homes, and the drugs in an ADD are replenished by a pharmacy technician who travels to the nursing home to restock it. Currently, the regulation allows a nurse to access a traditional tackle-box stat box containing stat drugs without prior electronic authorization from a pharmacist. However, under the current language a nurse may not access such drugs from an ADD without prior electronic authorization from the pharmacy. The petitioner brought to the attention of the board the discrepancy wherein the prior authorization requirement is based on how the drugs are stored, which the board acknowledged and affirmed. The board now proposes to exempt the stat drugs from prior pharmacist authorization requirement when they are accessed through an ADD.

Estimated Benefits and Costs. The proposed changes remove the prior authorization requirement if a stat drug is dispensed from an ADD, provided that "a delay in administration of the drug could result in harm to the patient." As mentioned, ADD is an alternative or supplemental way of storing and delivering stat and emergency drugs at nursing homes. The removal of the prior authorization requirement would make use of ADDs more attractive for stat drug distribution at nursing homes as it would eliminate an administrative inconvenience. According to Department of Health Professions (DHP), the cost of a simple ADD varies between $4,000 and $7,000, but a more technologically sophisticated ADD could cost as much as $30,000 to $100,000. Since the use of an ADD is optional, and pharmacies rather than nursing homes would most likely purchase them and keep at the nursing homes, a pharmacy would start using an ADD only if the benefits of an ADD exceed its costs. Thus, we can reliably infer that the proposed changes do not create any additional compliance costs for the pharmacies contracted with nursing homes.

To the extent pharmacies shift their stat drug delivery at nursing homes toward use of ADDs, several indirect effects could be expected. For example, the board concluded that patient and drug security may both be increased through utilization of ADDs because stat or emergency use drugs stored in an ADD would contain an electronic record of access to those drugs, while the current tackle-box style storage systems do not.[4] The board also notes that the removal of prior authorization requirement would speed up the ability to access stat drugs from an ADD and thus benefit the patients. As a result, diversion of stat-use medications would be less likely while preserving quick access to these medications. Also, a shift away from courier drug delivery would reduce the need for courier services and increase demand for pharmacy technicians. Finally, makers of ADDs would likely see an increase in demand for their machines to the extent pharmacies start using them in response to the proposed changes.

Businesses and Other Entities Affected. The proposed changes would primarily effect nursing homes, the pharmacies with which they contract, and their residents who use stat drugs. According to Virginia Department of Health, there are nearly 300 licensed nursing homes containing over 33,000 beds.[5] None of the affected entities appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[6] 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, the proposed changes would make use of ADDs more attractive by removing prior authorization from the pharmacy when dispensing a stat drug for urgent use and the use of ADDs is optional. Thus, no direct adverse impact is indicated.

Small Businesses[7] Affected.[8] The proposed amendments do not adversely affect small businesses.

Localities[9] Affected.[10] The proposed amendments apply to affected entities in all localities in Virginia.

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

Effects on the Use and Value of Private Property. Although the proposed changes may incentivize the use of ADDs for stat drug distribution at nursing homes, no direct impact on the use and value of private property or real estate development costs is expected.

[1]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.

[2] https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=361.

[3] See page 9 at https://townhall.virginia.gov/l/GetFile.cfm?File=30\4694\7885\Agency Statement_DHP_7885_v1.pdf.

[4] See page 2 at https://townhall.virginia.gov/l/GetFile.cfm?File=30\5966\9953\Agency Statement_DHP_9953_v3.pdf.

[5] https://www.vdh.virginia.gov/licensure-and-certification/division-of-long-term-care-services/.

[6] 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.

[7] 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."

[8] 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.

[9] "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.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) remove the prior authorization requirement if a stat drug is dispensed from an automatic dispensing device (ADD), provided that a delay in administration of the drug could result in harm to the patient; and (ii) include drugs that would be included in a stat drug box, thereby treating drugs that would be contained in a stat drug box the same as drugs that would be kept in an emergency kit. This action is in response to a petition for rulemaking.

18VAC110-20-555. Use of automated dispensing devices.

Nursing homes licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia may use automated drug dispensing systems, as defined in § 54.1-3401 of the Code of Virginia, upon meeting the following conditions:

1. Drugs placed in an automated drug dispensing system in a nursing home shall be under the control of the pharmacy providing services to the nursing home, the pharmacy shall have online communication with and control of the automated drug dispensing system, and access to any drug for a patient shall be controlled by the pharmacy.

2. A nursing home without an in-house pharmacy shall obtain a controlled substances registration prior to using an automated dispensing system, unless the system is 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 administration.

3. For facilities not required to obtain a controlled substance registration, access to the automated dispensing device shall be restricted to a licensed nurse, pharmacist, or prescriber~~,~~ or a registered pharmacy technician for the purpose of stocking or reloading.

4. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber under the following conditions:

a. ~~A~~ No drug~~, including a drug that would be stocked in a stat drug box pursuant to subsection B of 18VAC110-20-550,~~ may ~~not~~ be administered to a patient from an automated dispensing device until a pharmacist has reviewed the prescription order and electronically authorized the access of that drug for that particular patient in accordance with the order.

b. The PIC of the provider pharmacy shall ensure that a pharmacist who has online access to the system is available at all times to review a prescription order as needed and authorize administering pursuant to the order reviewed.

c. Drugs that would be stocked in an emergency drug kit pursuant to 18VAC110-20-540 or a stat drug box pursuant to subsection B of 18VAC110-20-550 may be accessed prior to receiving electronic authorization from the pharmacist, provided that the absence of the drugs would threaten the survival of the ~~patients~~ patient or that a delay in administration of the drug could result in harm to the patient.

d. Automated dispensing devices shall be capable of producing a hard-copy record of distribution that shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.

5. Drugs placed in automated dispensing devices shall be in the manufacturer's sealed original unit dose or unit-of-use packaging or in repackaged unit-dose containers in compliance with the requirements of 18VAC110-20-355 relating to repackaging, labeling, and records.

6. Prior to the removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device, which shall include the date; drug name, dosage form, and strength; quantity; nursing home; a unique identifier for the specific device receiving drugs; and initials of the pharmacist checking the order of drugs to be removed from the pharmacy and the records of distribution for accuracy.

7. At the direction of the PIC, drugs may be loaded in the device by a pharmacist or a pharmacy technician adequately trained in the proper loading of the system.

8. At the time of loading, the delivery record for all Schedules II through VI drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy.

9. At the time of loading any Schedules II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the PIC, who shall be responsible for reconciliation of the discrepancy or the proper reporting of a loss.

10. The PIC of the provider pharmacy or ~~his~~ the PIC's designee shall conduct at least a monthly audit to review distribution and administration of Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedules II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or ~~his~~ the PIC's designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. A sample shall include all Schedules II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. The hard copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

11. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.

12. Personnel allowed access to an automated dispensing device shall have a specific access code ~~which~~ that records the identity of the person accessing the device.

13. The PIC of the pharmacy providing services to the nursing home shall establish, maintain, and ~~assure~~ ensure compliance with written policy and procedure for the accurate stocking and proper storage of drugs in the automated drug dispensing system, accountability for and

security of all drugs maintained in the automated drug dispensing system, preventing unauthorized access to the system, tracking access to the system, complying with federal and state regulations related to the storage and dispensing of controlled substances, maintaining patient confidentiality, maintaining required records, and ~~assuring~~ ensuring compliance with the requirements of this chapter. The manual shall be ~~capable of being accessed~~ accessible at both the pharmacy and the nursing home.

14. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the nursing home, except:

a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible, provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

b. Distribution and delivery records and required signatures may be generated or maintained electronically, provided:

(1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. Schedules II through V distribution and delivery records may only be stored offsite or electronically as described in subdivisions 14 a and 14 b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained offsite or electronically, provided that (i) they can be readily retrieved upon request; ~~provided~~ (ii) they are maintained in a read-only format that does not allow alteration of the records; and ~~provided~~ (iii) a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R23-7251; Filed May 16, 2024, 8:44 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-50).**

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

Effective Date: July 17, 2024.

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

Summary:

The amendments reduce the number of continuing education (CE) hours necessary to continue being approved as a supervisor, retaining the requirement for 14 hours of CE for the initial registration of supervision but changing the requirement to seven hours of CE relating to provision of supervision every five years thereafter.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC140-20-50. Experience requirements for a licensed clinical social worker.

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction. Prior to registration for supervised experience, a person shall satisfactorily complete the educational requirements of 18VAC140-20-49.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of a supervisor to a supervisor not currently approved by the board:

a. Register on a form provided by the board;

b. Submit a copy of a supervisory contract completed by the supervisor and the supervisee;

c. Submit an official transcript documenting a graduate degree and clinical practicum as specified in 18VAC140-20-49; and

d. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total

of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability, or geography.

a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.

b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. ~~The~~ After the initial graduate course or 14 hours of continuing education in supervision, at least seven hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom the supervisor has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) ~~were~~ not designated as clinical social workers because the jurisdiction did not require such designation.

C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment, and treatment method within the client population seen by the applicant. It is the applicant's responsibility to ensure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training, and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision;

7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and

8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.

2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.

3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and telephone number.

4. Supervisees shall not supervise the provision of clinical social work services provided by another person.

5. While providing clinical social work services, a supervisee shall remain under board approved supervision until licensed in Virginia as a licensed clinical social worker.

VA.R. Doc. No. R21-6721; Filed May 16, 2024, 8:40 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Proposed Regulation

Title of Regulation: **24VAC30-73. Access Management Regulations (amending 24VAC30-73-10, 24VAC30-73-20, 24VAC30-73-30, 24VAC30-73-50 through 24VAC30-73-90, 24VAC30-73-120, 24VAC30-73-150, 24VAC30-73-160).**

Statutory Authority: § 33.2-245 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 16, 2024.

Agency Contact: Jo Anne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Basis: Authority for the Virginia Department of Transportation (VDOT) to regulate entrances and manage access to highways is provided in §§ 33.2-223, 33.2-240, 33.2-241, 33.2-242, and 33.2-245 of the Code of Virginia.

Purpose: Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways. As such, the regulation is necessary for the protection of public health, safety, and welfare.

Substance: In addition to administrative updates, eliminating redundancy, adding clarifying language, and bringing the text in line with current practice, VDOT proposes to remove the documents incorporated by reference (DIBR) from the chapter.

Issues: The primary benefit to both the public and VDOT of the removal of the DIBR section is improved clarity for regulated entities, ensuring that regulated entities are aware of the specific documents relevant to them by including the documents in the terms of the land use permit. This change will also ensure that the most updated version of each document is clearly specified for compliance. There are no disadvantages to this proposed change, as the permit forms will be updated to correspond with this change and all permit documents are publicly available on VDOT's website. The other proposed changes to the regulation benefit the public by removing redundant or outdated language and providing clarity as to current VDOT practice and are not anticipated to present a disadvantage to the public or the Commonwealth.

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 and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to Governor Youngkin's Executive Order 19[2] (EO 19), the Department of Transportation (VDOT) proposes to eliminate regulatory requirements by removing documents incorporated by reference (DIBR) and instead referencing those documents in the terms of the land use permit applications. The proposed action would also remove redundant or obsolete language.

Background. This regulation enables VDOT to control access to state highways and set standards and policies for the entrances that provide this access. According to VDOT, each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions. In short, the entrance and site design must allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

In response to EO 19 and after undertaking a comprehensive review of this regulation, VDOT is proposing changes to the requirements in the regulation. This would primarily be done by removing DIBRs and instead referencing those documents in the terms of the land use permits that regulated entities must

obtain before initiating a project that may affect highway access. Currently, the regulation includes eight DIBRs. When an agency adds a DIBR to a regulation, "The material in the document becomes the text of the regulation and an enforceable part of the regulation" (1VAC7-10-140). Thus, removing the DIBRs removes all the requirements therein, just as if the requirements had been stated in the body of the regulation. These DIBRs, which contain the entrance and site design standards, are: VDOT Road Design Manual, 2011, VDOT Road and Bridge Specifications, 2007, revised 2011, VDOT Road and Bridge Standards, 2008, revised 2011, Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.7, VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004, Highway Capacity Manual (HCM), 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001, VDOT Instructional and Informational Memorandum IIM-LD-227.5, 2011, Trip Generation, 8th Edition, 2008, Institute of Transportation Engineers, 1099 14th Street, N.W., Suite 300 West, Washington, DC 20005, Instructional and Informational Memorandum IIM LD-227.5, 2011 (VDOT)[3].

The current regulation also includes the following forms: LUP-A - Land Use Permit Application (rev. 03/10), LUP-SP - Land Use Permit Special Provisions (Notice of Permittee Liability) (rev. 12/10), LUP-CSB - Corporate Surety Bond (rev. 03/10), LUP-LC - Letter of Credit Bank Agreement (rev. 03/10), LUP-SB - Land Use Permit Surety Bond (rev. 03/10).

The LUP-A (Land Use Permit Application) is a relatively short (one page) form. It requires compliance in part "with the rules and regulations of the Commonwealth Transportation Board of Virginia"; "any agreement between the parties"; contains language that applicant assumes any cost responsibilities covering work under the permit; that applicant will maintain work as approved; that applicant is responsible for any damages; that Commonwealth is indemnified from damages, etc. The LUP-A also contains contact information for the applicant; surety information; proof of attestation that the utility company is registered with the appropriate notification center and that a notarized affidavit is attached stating that entities with property interests in adjacent properties are notified that a permit application has been made; description of the activity for the permit is sought "as per attached plans" with detailed geographic location information; if applicable, the consent to full salary and expenses of a state inspector in conjunction with the project; and signature of the applicant and the agent.

Notably, the LUP-A does not contain any references to any of the DIBRs in and of itself. However, it requires a description of the planned activities "as per attached plans." According to VDOT, those attached plans depicting the proposed entrance are drawn by a professional engineer (PE) on behalf of the applicant. The PE submitting the plans must have the required engineering knowledge pursuant to DPOR regulations (18VAC10-20-730). These engineering plans would also include text that references the portions of the entrance and site design standards that would apply. Thus, because each project and the accompanying plans will vary, it is the PE's responsibility to identify which of the standards in numerous DIBRs or portions thereof are specifically applicable to the proposed activities and ensure that the plans are drawn in compliance with those standards. In contrast to this current approach, VDOT is proposing in this action to strike the references to all of the DIBRs and forms currently in the regulatory text, and instead add two new forms, which are Land Use Permit Application for Commercial Entrance Installation-(LUP-CEI) (rev. 3/2024) and Land Use Permit Application for Private Entrance-(LUP-PE) (rev. 3/2024).[4] These two forms would serve as the new permit application for commercial or private entrance installations.

Generally speaking, the new forms are much lengthier (each over 10 pages) and appear to contain all the content that the current forms have, but also include additional information. The additional information on these forms includes relevant references to VDOT's authority in regulations and the Code of Virginia, application requirements, permit fees and charges, surety requirements and refunds, insurance requirements, and the requirements for the commercial or private entrances. The main difference between the current and the proposed regulation lies in how each one references the entrance and site design requirements for private and commercial projects. The entrance requirements in the new forms specifically identify the document and portions thereof that contain the relevant design standards for each type of activities, such as provisions relating to drainage, curbs, pavement, signs relating to turns, accommodation of pedestrian and bicycle facilities, work protection and entrance spacing, etc. In other words, instead of including the entrance and site design standards in the regulatory text in the form of eight DIBRs, the relevant portions of each document (those that apply to every permit) are referenced in the new forms.

In summary, the proposed action would remove all of the existing DIBRs and forms from the regulation and instead add two new forms: one for private entrances and the other for commercial entrances. Those two forms would contain generally the same information the current form contains but would also add more detailed information particularly identifying the documents and portions thereof where the specific design standards applicable to the proposed activities in each type of permit is located.

Estimated Benefits and Costs. Under the proposed changes, it appears there would be more clarity on which entrance and site design standards are applicable to the type of activities being proposed. According to VDOT, the current approach of including the standards and specifications in the regulations as DIBR leads to an overly broad application and thus potential confusion for applicants, as only specific parts of the documents apply to different types of permits. Under the

proposal, the terms and conditions of the permit would be more narrowly tailored to incorporate those requirements that relate directly to the activities for which the permit is granted (e.g., it is unnecessary to include utility relocation requirements for a permit authorizing a bike race). The added clarity may reduce uncertainty and consequently benefit the applicants. Under the current approach, an applicant's PE is responsible for identifying every DIBR and the portions thereof where the applicable design standards are located. As a result, a PE who is not very familiar with the DIBRs would have to spend time to identify the relevant standards, and if this is not done accurately the PE may unknowingly submit a non-compliant permit application only to be rejected by VDOT. In this scenario, the PE's time and effort to prepare the permit application and VDOT's time and effort to review it would be wasted, and the project may be delayed. Added clarity may help avoid possible situations such as this. Thus, the proposal may reduce the burden on the permittee of ascertaining or identifying the requirements that must actually be followed and help avoid costs from potential mistakes.

Also, VDOT asserts that the safety and effectiveness of the highway system and travel would be maintained and not negatively impacted because the appropriate standards would still apply to the permitted activity and VDOT would be able to enforce the terms and conditions of the permit because it functions as a contract. VDOT's ability to take these steps appears to be enhanced through new language added to the regulation, which states that "VDOT may take any action within the right-of-way to block, obstruct or remove an unpermitted entrance and may initiate civil action for damages, injunction or other appropriate remedy." Accordingly, any violation of the terms of a given permit can be addressed contractually, and will not rely upon administrative remedies pursuant to the Virginia Administrative Process Act (APA).

With respect to the potential impact of any enforcement actions that may be taken regarding violations of the design standards, VDOT reports that it is not aware that any previous administrative hearings have been held pursuant to the APA. VDOT has had land use permit violations, and at least one hearing in the last six years, but that case "involved someone trying to do an activity illegal under state law." Similarly, VDOT is not aware of any civil enforcement actions that have been taken against permittees in a court of law, although the new enforcement language noted may allow for such actions in the future. However, VDOT states that notwithstanding the removal of the DIBRs as regulatory requirements, it can continue to enforce the design standards through the regulations through the terms of the forms by using the "built according to approved design" requirement. Thus, it is not clear if there would be any economic effects from anticipated enforcement of the terms and conditions of the permit primarily through its functioning as a contract instead of as a regulatory mechanism.

In practice, it does not appear the proposed change will have a significant economic impact. Regarding the differences between the design standards that are currently treated as DIBRs and the versions of the same documents that would be used under the proposed approach, VDOT states that there are some differences, but they are relatively minor. VDOT states that at a minimum an applicant is currently required to meet the standards as set out in the regulation, but since newer versions of the DIBRs are available on VDOT's website the agency allows submitters to use these newer versions. That said, the newer versions are preferred by VDOT and are generally used by applicants, and thus no substantial change in practice is expected. Further, VDOT points out the regulation (24VAC30-73-70 B 3) gives broad authority to VDOT's permitting engineers (to "consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor" for commercial entry designs. Likewise, the design process set out in the Road Design Manual states that, "Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer at the Residency or District, when based upon sound engineering principles." Moreover, VDOT has a process for allowing design standard variations and spacing standard exceptions, which is set out in VDOT's Instructional and Informational Memorandum IIIM-LD-227. Approximately 20% of entrances receive spacing exceptions (to allow closer spacing). Given the apparently minor differences between different versions of the design standards, and VDOT's discretion on how the standards are enforced, it is also not clear if there would be any significant economic impact from the potential design differences that would be enforced by treating the permit as a contract instead of as a regulatory mechanism.

Businesses and Other Entities Affected. There were 4,200 permits issued under this access management regulations in 2023. No permit applicant appears to be disproportionally affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[5] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[6] As noted, based on the information provided by VDOT, there does not appear to be changes in the design standards or enforcement mechanisms that would create an adverse impact on permit applicants. Thus, no adverse impact appears to be indicated based on available information.

Small Businesses[7] Affected.[8] VDOT states that at least some of the permittees would be small businesses. However, no adverse impact on them is expected.

Localities[9] Affected.[10] Based on information available, the proposed amendments do not appear to disproportionately affect any particular localities, nor introduce costs on local governments.

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

Effects on the Use and Value of Private Property. No significant effects on the use and value of private property nor on real estate development costs are expected based on information available from VDOT.

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[1]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.

[2] https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf

[3] Not listed as a DIBR, but currently referenced in the regulation and would be removed from the text.

[4] https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/land-use-and-development/land-use-permits/.

[5] 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.

[6] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[7] 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."

[8] 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.

[9] "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.

[10] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department of Transportation accepts the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

After a comprehensive review of Access Management Regulations (24VAC30-73) and in accordance with Executive Order 19 (2022), the amendments (i) remove all documents incorporated by reference from the regulation and add the Virginia Department of Transportation (VDOT) land use permit; (ii) update administrative information, eliminate redundancy, clarify language, and align text with current practice; and (iii) add two new forms.

24VAC30-73-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median ~~openings/crossovers~~ openings or crossovers, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the systems of state highways.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic and channel it into the arterial system.

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or ~~his~~ that individual's designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" means an opening in a nontraversable median, ~~(~~such as a concrete barrier or raised island~~)~~, that provides for crossing movements and left turning movements.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas ~~in~~ into which VDOT is divided to oversee the maintenance and construction on the state highways, bridges, and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee ~~or employees~~ designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Entrance, commercial" means any entrance serving land uses that generate more than 50 vehicular trips per day or the trip generation equivalent of more than five individual private residences or lots for individual private residences using ~~the~~

VDOT-approved methodology ~~in the Institute of Transportation Engineers Trip Generation, 8th Edition, 2008~~.

"Entrance, low volume commercial" means any entrance, other than a private entrance, serving five or fewer individual residences or lots for individual residences on a privately owned and maintained road or land uses that generate 50 or fewer vehicular trips per day using ~~the~~ VDOT-approved methodology ~~in the Institute of Transportation Engineers Trip Generation 8th Edition, 2008~~.

"Entrance, private" means an entrance (i) that serves up to two private residences and is used for the exclusive benefit of the occupants ~~or an entrance~~; (ii) that allows agricultural operations to obtain access to fields; or ~~an entrance~~ (iii) to a civil ~~and~~ or communication infrastructure ~~facilities~~ facility that ~~generate~~ generates 10 or fewer trips per day, such as a cell ~~towers~~ tower, pump ~~stations~~ station, ~~and~~ or stormwater management ~~basins~~ basin.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purposes of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

~~"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.~~

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property and to other streets.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way, that is part of the systems of state highways.

"Intersection" means (i) a crossing of two or more highways at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial entrance.

"Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. ~~"Level of service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual, 2010 (Transportation Research Board).~~

"Limited access highway" means ~~a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway~~ the same as that term is defined in § 33.2-400 of the Code of Virginia.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Median opening" means a crossover or a directional opening in a nontraversable median, ~~(~~such as a concrete barrier or raised island~~)~~, that physically restricts movements to specific turns such as left turns and U-turns.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person ~~or persons~~, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person ~~or persons~~, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means ~~that~~ property within the systems of state highways that is open or may be opened for public travel or use ~~or both~~ in the Commonwealth. This definition includes those public rights-of-way ~~in~~ for which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roundabout" means a circular intersection with yield control of all entering traffic to traffic within the circular intersection ~~and~~, channelized approaches, and a central island that ~~deflect~~ deflects entering traffic to the right.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ ~~15.2-2286 and~~ 15.2-2241 through 15.2-2245 and 15.2-2286 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle's braking distance.

"Systems of state highways" means all highways, streets, and roads under the ownership, ~~the~~ control, or ~~the~~ jurisdiction of VDOT, including ~~but not limited to,~~ the primary, secondary, and interstate highways.

~~"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.~~

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane; or a separate lane for the storage of vehicles that intend to enter or leave a highway.

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or ~~his~~ the commissioner's designees.

24VAC30-73-20. Authority to regulate entrances to systems of state highways.

A. VDOT's authority to regulate entrances and manage access to highways is provided in §§ 33.2-223, 33.2-240, 33.2-241, 33.2-242, and 33.2-245 of the Code of Virginia. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. ~~Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.~~

B. The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in § 33.2-401 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).

C. The district administrators or ~~their~~ the district administrators' designees are authorized to issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

24VAC30-73-30. Applicability.

A. This chapter shall apply to any highway ~~with a functional classification as a principal arterial, minor arterial, collector, or local street unless otherwise indicated herein. B. The commissioner shall publish maps of the Commonwealth on the~~

~~VDOT website that show all highways with the above functional classifications and shall periodically update such maps~~ that is a part of the systems of state highways.

24VAC30-73-50. Appeal and sight distance exception procedure.

A. The permit applicant may appeal denial or revocation or conditions of a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 calendar days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue ~~or issues~~. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 calendar days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 calendar days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 calendar days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report~~,~~ prepared by a professional engineer. ~~Refer to Instructional and Informational Memorandum IIM-LD-227.5, 2011 (VDOT), for requirements concerning approval of sight distance exceptions.~~

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 calendar days of receipt of the written exception request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

24VAC30-73-60. General provisions governing entrances.

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. ~~The provisions of § 33.2-241 of the Code of Virginia shall govern any violation~~ VDOT may take any action within the right-of-way to block, obstruct, or remove an unpermitted entrance and may initiate civil action for damages, injunction, or other appropriate remedy.

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road ~~or roads~~ the proposed entrance ~~or entrances~~ is ~~or are~~ to be constructed.

C. Entrance standards established by localities that are stricter than those of VDOT shall govern.

24VAC30-73-70. Commercial entrance design.

A. Low volume commercial entrance design and construction shall comply with the private entrance design standards ~~in Appendix F of the Road Design Manual, 2011 (VDOT)~~ specified in the terms of the permit and the stopping or intersection sight distance provision in 24VAC30-73-80. Commercial entrance design and construction shall comply with the provisions of this chapter ~~and~~, the ~~standards in the Road Design Manual, 2011 (VDOT), the Road and Bridge Standards, 2008, revised 2011, the Road and Bridge Specifications, 2007, revised 2011 (VDOT), other VDOT~~ engineering and construction standards ~~as may be appropriate~~ specified in the terms of the permit, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use, and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.) and applicable VDOT standards specified in the terms of the permit. Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. ~~The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards, 2008, revised 2011, shall be utilized in the design.~~

1. In the event an entrance is proposed within the limits of a funded highway project that will ultimately change a highway, the permit applicant may be required to construct,

to the extent possible, entrances compatible with the highway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the ~~Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations," 2004~~ terms of the permit.

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards ~~in Appendix F of the Road Design Manual, 2011 (VDOT)~~ specified in the terms of the permit.

~~5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway or during the peak hours of the generator, whichever is appropriate as determined by the district administrator's designee.~~

~~6.~~ 5. The use of a shared entrance between adjacent property owners shall be the preferred method of access.

~~7. The construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers shall be approved in accordance with the crossover location approval process specified in Appendix F of the Road Design Manual, 2011 (VDOT).~~

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance nor the proposed traffic circulation patterns within the parcel will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. The district administrator's designee will consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic, and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. ~~Mitigation~~ Example mitigation measures that may be considered include ~~but are not limited to~~:

a. Construction of auxiliary lanes or turning lanes~~,~~ or pavement ~~transitions/tapers~~ transitions or tapers;

b. Construction of new crossovers~~,~~ or the relocation, removal, or consolidation of existing crossovers;

c. Installation, modification, or removal of traffic signals and related traffic control equipment;

d. Provisions to limit the traffic generated by the development served by the proposed entrance;

e. Dedication of additional right-of-way or easement~~, or both,~~ for future highway improvements;

f. Reconstruction of existing highway to provide required vertical and horizontal sight distances;

g. Relocation or consolidation of existing entrances; or

h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements ~~or both~~ or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

24VAC30-73-80. Minimum sight distance for commercial entrances.

A. No less than minimum intersection sight distance shall be obtained for a commercial entrance and no less than minimum stopping or intersection sight distance shall be obtained for a low volume commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards ~~as described in Appendix F of the Road Design Manual, 2011 (VDOT)~~ specified in the terms of the permit. The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where (i) the permit applicant furnishes the district administrator's designee with a speed study prepared in

accordance with the ~~Manual on Uniform Traffic Control Devices, 2003, revised 2007 (FHWA)~~ Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways (24VAC30-315); (ii) the methodology ~~that~~ demonstrates that the operating speed of the segment of highway is lower than the legal speed limit; and~~,~~ (iii) in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing highway be adjusted to accommodate certain design elements of a proposed commercial entrance including~~, but not limited to,~~ median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the highway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

24VAC30-73-90. Private entrances.

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in ~~Appendix F of the Road Design Manual, 2011 (VDOT),~~ the terms of the permit cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts~~, or any combination of these,~~ necessary to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall ~~maintain~~:

1. On shoulder section highways, maintain that portion of the entrance within the normal shoulder portion of the highway.

2. On highways with ditches, clean the drainage pipe at the entrance and may replace the pipe if necessary to preserve the highway and protect the traveling public.

3. On highways with curb, gutter, and sidewalk belonging to VDOT, maintain that portion of the entrance that extends to the back of the sidewalk. If ~~a~~ no sidewalk is ~~not~~ present, VDOT shall maintain that portion of the entrance that extends to the back of the curb line.

4. On highways with curb, gutter, and sidewalk not belonging to VDOT, maintain only to the flow line of the gutter pan.

5. On highways with shoulders, ditches, and sidewalk belonging to VDOT, maintain that portion of the entrance that extends to the back of the sidewalk.

24VAC30-73-120. Commercial entrance access management.

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure that the safety, integrity, and operational characteristics of the systems of state highways are maintained. The proposed commercial entrance shall meet the VDOT access management standards ~~contained in Appendix F of the Road Design Manual, 2011 (VDOT),~~ specified in the terms of the permit and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway.

B. A proposed development's compliance with the access management requirements specified below should be considered during the local government and VDOT's review of any rezoning, site plan, or subdivision plat for the development. VDOT's review of a rezoning traffic impact statement submitted for a development in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) shall include comments on the development's compliance with the access management requirements specified ~~below~~ in subsection C of this section.

C. Access management requirements, in addition to other regulations in this chapter, include ~~but are not limited to~~:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges, or similar areas with sensitive traffic operations. A request for an exception to this requirement submitted according to ~~24VAC30-73-120~~ subsection D of this section shall include

a traffic engineering study that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

2. Commercial entrances shared with adjoining properties. To reduce the number of entrances to state highways, ~~a condition of entrance permit issuance shall be that~~ entrances shall serve two or more parcels. A shared commercial entrance shall be created and designed to serve adjoining properties. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be included with the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property. The district administrator's designee is authorized to approve an exception to this requirement upon submittal of a request according to ~~24VAC30-73-120~~ subsection D of this section that includes ~~the following~~:

a. Written evidence that a reasonable agreement to share an entrance cannot be reached with adjoining property owners~~;~~, or

b. Documentation that there are physical constraints, including ~~but not limited to~~ topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance.

3. Spacing of commercial entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections ~~in Appendix F of the Road Design Manual, 2011 (VDOT)~~ specified in the terms of the permit, except as specified ~~below~~ in subdivisions C 3 a through f of this section.

a. Where a plan of development or a condition of development that identifies the specific location of an entrance ~~or entrances~~ was proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia as part of a rezoning approved by the locality prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, such entrances shall be exempt from the applicable spacing standards for entrances and intersections, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shall be exempt from the applicable spacing standards for entrances and intersections when the location of such entrances are shown on a subdivision plat, site plan, preliminary subdivision plat, or a Secondary Street Acceptance Requirements (24VAC30-92) conceptual sketch that was submitted by the locality to VDOT for review and received by VDOT prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, or is valid pursuant to §§ 15.2-2260 and 15.2-2261 of the Code of Virginia and was approved in accordance with §§ ~~15.2-2286 and~~ 15.2-2241 through 15.2-2245 and 15.2-2286 of the Code of Virginia prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets. The district administrator's designee ~~is authorized to~~ may exempt such entrances from the spacing standards upon submittal of a request according to ~~24VAC30-73-120~~ subsection D of this section that includes documentation of the ~~above~~ criteria in this subdivision a.

b. VDOT may work with a locality ~~or localities~~ on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the applicable spacing standards for entrances and intersections, subject to approval by the district administrator. Such plans may also identify the locations of any physical constraints to creating shared entrances or ~~vehicular/pedestrian~~ vehicular and pedestrian connections between adjoining properties (see ~~24VAC30-73-120~~ subdivisions C 2 and C 4 of this section). If the permit applicant submits a request according to ~~24VAC30-73-120~~ subsection D of this section for an exception to the spacing standards and provides documentation that the location of the proposed commercial entrance is within the limits of an access management plan approved by the local government and by VDOT, the plan should guide the district administrator's designee in approving the exception request and in determining the appropriate location of the entrance.

c. On older, established business corridors along a highway in a locality where existing entrances and intersections did not meet the spacing standards prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, the district administrator's designee may allow spacing for new entrances and intersections ~~may be allowed by the district administrator's designee~~ that is consistent with the established spacing along the highway, provided that the permit applicant submits a request according to ~~24VAC30-73-120~~ subsection D of this section for an exception to the spacing standards that includes evidence that reasonable efforts were made to comply with the other access management requirements of this section, including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out ~~or both~~ movements.

d. Where a developer proposes a development within a designated urban development area as defined in § 15.2-2223.1 of the Code of Virginia or an area designated in the local comprehensive plan for higher density development that incorporates principles of new urbanism and traditional neighborhood development, which may include ~~but need not be limited to~~ (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater

management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for entrances and intersections internal to the development that differ from the otherwise applicable spacing standards, provided that the developer submits a request according to ~~24VAC30-73-120~~ subsection D of this section for an exception to the spacing standards that includes information on the design of the development and on the conformance of such entrances and intersections with the intersection sight distance standards specified in ~~Appendix F of the Road Design Manual, 2011 (VDOT)~~ the terms of the permit.

e. Where a development's second or additional commercial ~~entrances are~~ entrance is necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways in accordance with the Secondary Street Acceptance Requirements (24VAC30-92) and such commercial entrances cannot meet the spacing standards for highways, the developer may submit a request according to ~~24VAC30-73-120~~ subsection D of this section for an exception to the spacing standards that includes information on the design of the development. The following shall apply to the exception request:

(1) For highways with a functional classification as a collector or local street, the district administrator's designee may approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance ~~or entrances~~. Such commercial ~~entrances~~ entrance shall be required to meet the intersection sight distance standards specified in ~~Appendix F of the Road Design Manual, 2011 (VDOT)~~ the terms of the permit.

(2) For highways with a functional classification as a principal or minor arterial, the district administrator's designee shall, in consultation with the developer and the locality within which the development is proposed, either approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance ~~or entrances,~~ or waive such state requirements that necessitate a second or additional commercial ~~entrances~~ entrance. If approved, such commercial ~~entrances~~ entrance shall be required to meet the intersection sight distance standards specified in ~~Appendix F of the Road Design Manual, 2011 (VDOT)~~ the terms of the permit.

f. Where a parcel of record has insufficient frontage on a highway to meet the spacing standards because of the dimensions of the parcel or a physical constraint, such as topography or an environmentally sensitive area, the entrance shall be physically restricted to right-in or right-out movements ~~or both~~ or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to ~~24VAC30-73-120~~ subsection D of this section shall include a traffic engineering study that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

4. ~~Vehicular/pedestrian~~ Vehicular and pedestrian circulation between adjoining undeveloped properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required on a highway with a functional classification as a principal or minor arterial highway, and may be required by the district administrator's designee on a highway with a functional classification as a collector, as a condition of commercial entrance permit issuance, to record access easements and to construct vehicular connections to the boundaries of the adjoining undeveloped property, ~~(~~which may include frontage roads or reverse frontage roads~~)~~, in such a manner that affords safe and efficient future access between the permit applicant's property and adjoining undeveloped properties.

a. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties and adjoining developed properties with sidewalks that abut the property.

b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such ~~vehicular/pedestrian~~ vehicular and pedestrian connections into the proposed development.

c. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified vehicular and pedestrian access connection and circulation system between the sites.

d. Such connections shall not be required if the permit applicant submits a request for an exception according to ~~24VAC30-73-120~~ subsection D of this section and provides documentation that there are physical constraints to making such connections between properties, including ~~but not limited to~~ topography, environmentally sensitive areas, and hazardous uses, or provides documentation of other constraints to making such connections.

e. If a permit applicant does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements ~~or both~~ or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards ~~in Appendix F of the Road Design Manual, 2011 (VDOT)~~ specified in the terms of the permit. If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements ~~or both~~ or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to ~~24VAC30-73-120~~ subsection D of this section shall include a traffic engineering study that (i) evaluates the suitability of the entrance location for design as a roundabout and (ii) contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

D. A request for an exception from the access management requirements in ~~24VAC30-73-120~~ subsection C of this section shall be submitted in writing to the district administrator's designee. The request shall identify the type of exception, describe the reasons for the request, and include all documentation specified in ~~24VAC30-73-120~~ subsection C of this section for the type of exception. After considering all pertinent information, including any improvements that will be needed to the entrance or intersection to protect the operational characteristics of the highway, the district administrator's designee will advise the applicant in writing regarding the decision on the exception request within 30 calendar days of receipt of the written exception request, with a copy to the district administrator. ~~The applicant may appeal the decision of the district administrator's designee to the district administrator in accordance with the procedures for an appeal set forth in 24VAC30-73-50.~~

24VAC30-73-150. Temporary entrances (construction/ logging entrances).

~~A.~~ Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use Permit Regulations (24VAC30-151). The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. ~~The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards, 2003, revised 2007 (FHWA) and certified flaggers shall be used to ensure safe ingress and egress.~~

~~B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.~~

~~C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.~~

24VAC30-73-160. Access to public waters.

VDOT may grant the use of portions of the highway right-of-way for access to public waters upon written request from the Executive Director of the Virginia Department of ~~Game and Inland Fisheries~~ Wildlife Resources to the commissioner. The district administrator's designee may require that a commercial entrance permit be obtained in accordance with the provisions of this chapter for entrances that will provide access to landings, wharves, and docks.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (24VAC30-73)

~~LUP-A - Land Use Permit Application (rev. 03/10)~~

~~LUP-SP - Land Use Permit Special Provisions (Notice of Permittee Liability) (rev. 12/10)~~

~~LUP-CSB - Corporate Surety Bond (rev. 03/10)~~

~~LUP-LC - Letter of Credit Bank Agreement (rev. 03/10)~~

~~LUP-SB - Land Use Permit Surety Bond (rev. 03/10)~~

Letter of Credit Bank Agreement, LUP-LC (rev. 3/2016)

Land Use Permit Surety Bond, LUP-SB (rev. 3/2016)

Land Use Permit - Private Entrance Installation, LUP-PE (rev. 3/2024)

Land Use Permit - Commercial Entrance Installation, LUP-CEI (rev. 3/2024)

~~DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-73)~~

~~Information pertaining to the availability and cost of any of these publications should be directed to the address indicated for the specific document. Requests for documents of the Virginia Department of Transportation (VDOT) may be obtained from the department at 1401 E. Broad St., Richmond, Virginia 23219; however, department documents may be available over the Internet at www.virginiadot.org.~~

~~VDOT Road Design Manual, 2011.~~

~~Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.~~

~~VDOT Road and Bridge Specifications, 2007, revised 2011.~~

~~VDOT Road and Bridge Standards, 2008, revised 2011.~~

~~Manual on Uniform Traffic Control Devices for Streets and Highways, 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.7.~~

~~VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004.~~

~~Highway Capacity Manual, 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001.~~

~~VDOT Instructional and Informational Memorandum IIM-LD-227.5, 2011.~~

~~Trip Generation, 8th Edition, 2008, Institute of Transportation Engineers, 1099 14th Street, N.W., Suite 300 West, Washington, DC 20005.~~

VA.R. Doc. No. R24-7633; Filed May 28, 2024, 3:28 p.m.

Proposed Regulation

Title of Regulation: **24VAC30-92. Secondary Street Acceptance Requirements (amending 24VAC30-92-10, 24VAC30-92-60).**

Statutory Authority: §§ 33.2-210 and 33.2-334 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: August 16, 2024.

Agency Contact: Jo Anne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Basis: Section 33.2-326 of the Code of Virginia vests in Virginia Department of Transportation (VDOT) the control, supervision, management, and jurisdiction over the secondary system of highways. Further, the Commonwealth Transportation Board (CTB) is authorized by § 33.2-334 of the Code of Virginia to set standards for the acceptance of streets into the secondary system of highways. Section 33.2-334 of the Code of Virginia requires CTB to develop Secondary Street Acceptance Requirements (SSAR), promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities, and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT.

Purpose: The SSAR promotes public health, safety, and welfare and accepts only qualified roads into the state's highway system. The regulation is needed to reduce long-term traffic congestion and support more economic activity and better transportation systems. The SSAR includes provisions for the connectivity of highway and pedestrian networks with existing and future transportation networks if the streets are intended to be taken into the state secondary highway system.

Substance: The amendments add (i) a definition of underground utility trunk easement, (ii) exceptions to multiple connections requirements, and (iii) exceptions to additional connections requirements.

Issues: The advantage of the proposed regulatory changes to the public and agency is to provide VDOT the ability to make connectivity exceptions in a broader range of circumstances. The recommendations address challenges faced by developers and localities while preserving the public health, safety, and welfare as currently protected by the SSAR. VDOT does not anticipate any disadvantages to overall connectivity to the public or the Commonwealth from the changes.

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 and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. As a result of a 2022 legislative mandate,[2] the Commonwealth Transportation Board (board) proposes to add greater flexibility to the Secondary Street Acceptance Requirements that governs whether and how the Virginia Department of Transportation (VDOT) can incorporate new streets into the secondary state highway system. The proposed amendments would expand the situations when the district administrator's designee is required to waive or modify certain connectivity requirements and add a provision that would allow the designee to modify the requirements under certain conditions.

Background. Developers of subdivisions build most of Virginia's new roads.[3] This regulation (specifically, 24VAC30-92-60 Public benefit requirements) states that, "A street or network addition may only be accepted by the department for maintenance as part of the secondary system of state highways if it provides sufficient public benefit to justify perpetual public

maintenance as defined by this chapter." The specific requirements that determine whether or not a street provides sufficient public benefit, as well as waivers and variances for those requirements, are delineated under "public service requirements" (subsection B) and "connectivity requirements" (subsection C). For the purposes of subsection C, "connection" means "a street connection to an adjacent property or a stub out that will allow for future street connection to an adjacent property." The connectivity requirements are intended to provide redundant vehicle routes, alternate routes for emergency response vehicles, and more direct connections for pedestrians.[4]

Chapter 425 of the 2022 Acts of Assembly required that the connectivity requirements be amended to "include flexibility to limit the number of connections to adjacent property or highway networks as deemed appropriate."[5] The legislation also required VDOT to convene a stakeholder advisory group (SAG) composed of representatives from VDOT, local government, environmental advocacy organizations, and the residential and commercial land development and construction industry for the purpose of developing and providing recommended amendments to the regulation. Accordingly, VDOT convened a SAG with members from the Virginia Association of Commercial Real Estate, Home Builders of Virginia, Virginia Association of Counties, Virginia Fire Chiefs Association, Southern Environmental Law Center, Virginia Conservation Network, and VDOT. The SAG met five times between September 2022 and February 2023 and VDOT reports that the proposed amendments reflect a broad consensus amongst these stakeholders.[6]

VDOT proposes to amend two of the four connectivity standards under 24VAC30-92-60 C: the "multiple connections in multiple directions standard" and the "additional connections standard." The regulation currently directs the district administrator's designee to waive or modify the standard if "there is no reasonable connection possible due to a factor outside the control of the developer" and includes identical examples of such factors in each standard. In both instances, the language would be identically amended to (i) specify that factors, including the specific factors listed in the regulatory text, would be considered by the designee, and (ii) add an "underground utility trunk easement not put in place by the developer of the network addition" as a specific example of such factors.[7] A definition of "underground utility trunk easement" would also be added to the definitions section of the regulation.[8] In addition, each standard would be identically amended to add a possible circumstance where the district administrator's designee shall waive or modify the standard as it pertains to network additions.[9] Specifically, a modification or waiver would apply when, "The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction." VDOT reports that these changes would add extra flexibility regarding to the splitting of multi-phased developments into network additions that may differ from those additions originally planned. This would allow for changes in phasing as driven by market forces while still preserving ultimate connectivity.[10]

The "additional connections standard" would also be amended to add a subdivision providing for a locality-led process that provides flexibility to achieve local planning goals.[11] The proposed language would allow (but not require) the district administrator's designee to grant a waiver or modification if the applicant (developer) and the locality's chief executive or designee to submit a written opinion that the additional connections standard is impracticable or unwarranted due to one of six factors, including if it would impact the developer's ability to comply with local ordinances related to preservation of trees or open space.

Estimated Benefits and Costs. The proposed amendments are intended to benefit developers by expanding the acceptable grounds for waivers from the connectivity requirements, thereby reducing their road construction costs while still meeting the regulation's connectivity standards. VDOT anticipates that the regulatory changes would reduce the length of the overall review process for VDOT and localities. Each waiver that is granted allows the developer to remove approximately 150 to 500 feet of road from their plans. This will save VDOT and locality plan reviewers time as they will no longer have to review those connecting road segments. Additionally, since such roadway segments will not be built, they will not be accepted into the state highway system and require maintenance by VDOT, thereby avoiding current and future maintenance costs.

VDOT processed 33 waivers or modifications each year in 2022 and 2023 and expects the number of waiver requests to increase slightly under the regulatory changes. However, the agency anticipates that the increased workload can be absorbed by current VDOT staff. Thus, the cost savings are expected to exceed any cost increases from processing additional waiver applications. The proposed changes would also benefit localities by creating a channel for them to request waivers or modifications under certain circumstances. Although the number of localities with ordinances pertaining to preservation of trees or open space is unknown, more localities may be willing to adopt such ordinances if they know that they would not necessarily be overruled by road connectivity requirements.

Lastly, VDOT does not anticipate that granting more waivers and thus allowing fewer connections would disadvantage individuals or businesses that move to these developments. To the extent that the proposed changes lead to additional locality-led waivers to protect trees and open green spaces, local residents and businesses may benefit from this preservation. Similarly, avoiding an increase in the amount of impermeable surface via new road connections could also reduce possible flooding and other impacts on storm water systems.

Businesses and Other Entities Affected. As described, the proposed changes would benefit developers, localities, and VDOT. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[12] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[13] The proposed regulation would not increase net costs, including for VDOT. Thus, an adverse impact is not indicated.

Small Businesses[14] Affected.[15] The proposed amendments would not adversely affect small businesses.

Localities[16] Affected.[17] Localities that have road construction, such that those roads would be included in Virginia's secondary system of highways under the regulation, would be affected. As described previously, these localities would likely benefit from the proposed amendments. It should be noted that Arlington and Henrico maintain their own roads; thus, these localities would not be affected.[18]

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

Effects on the Use and Value of Private Property. By expanding the possible waivers for connectivity requirements, the proposed amendments would reduce real estate development costs, thereby increasing their expected profits, which would also increase the value of property development firms.

[1]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.

[2] See https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0425.

[3] See https://www.vdot.virginia.gov/projects/roads-qualify/#d.en.44478.

[4] See https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\78\36935\Agenda_VDOT_36935 _v1.pdf.

[5] See https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0425.

[6] See the agendas and minutes of the stakeholder group at https://townhall.virginia.gov/ L/ViewMeeting.cfm?MeetingID=36935, https://townhall.virginia.gov/L/ViewMeeting.cfm?Meet ingID=36975, https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=37050, https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=37283, and https://townhall.virginia.gov/ L/ViewMeeting.cfm?MeetingID=37539.

[7] VDOT reports that these changes were specifically requested by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines. See page 9 of the Agency Background Document (ABD): https://townhall.virginia.gov/l/GetFile.cfm?File=78\6276\10253\AgencyStatement_VDOT_10253_v1.pdf.

8 Underground utility trunk easement would be defined as, "an easement for the accommodation of a utility which has an existing underground utility trunk or transmission line (cable, pipeline, or similar facility); such lines are not used for distribution of the utility's services to individual customers, but rather for long distance carrying or transmission purposes."

[9] Per 24VAC30-92-10, a "network addition" is a group of interconnected street segments and intersections shown in a plan of development that are connected to the state highway system. Also see 24VAC30-92-40.

[10] See ABD, page 9.

[11] See the minutes of the SAG's fourth meeting for additional context.

[12] 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.

[13] 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[14] 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."

[15] 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.

[16] "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.

[17] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[18] See https://www.vdot.virginia.gov/about/districts/.

Agency's Response to Economic Impact Analysis: The Department of Transportation accepts the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to Chapter 425 of the 2022 Acts of Assembly, the proposed amendments to the Secondary Street Acceptance Requirements (SSAR) increase flexibility to connectivity elements, including (i) adding a definition of underground utility trunk easement and (ii) adding waivers and modifications for certain connectivity requirements.

24VAC30-92-10. Definitions.

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

"Abandonment" in all its forms means the legislative action reserved for and granted to the local governing body to

extinguish the public's right to a roadway under the jurisdiction of the Virginia Department of Transportation pursuant to §§ 33.2-909 and 33.2-912 of the Code of Virginia.

"Accessible route" means a public or private continuous, unobstructed, stable, firm, and slip-resistant path connecting all accessible elements of a facility, ~~(~~which may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts~~)~~, that can be approached, entered, and used by persons with disabilities. An accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

"ADT" means average daily traffic count (see "projected traffic").

"Applicable former requirements" means the 2005 Subdivision Street Requirements for developments submitted prior to July 1, 2009, and the 2009 edition of the Secondary Street Acceptance Requirements for developments submitted between July 1, 2009, and January 31, 2012, inclusive.

"Best management practice" or "BMP" means schedules of activities; prohibitions of practices, including both structural and nonstructural practices; maintenance procedures; and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"Clear zone" means the total border area of a roadway, including, if any, parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident. (See the Road Design Manual, 2011 (VDOT) and its Appendix B (1) (the Subdivision Street Design Guide) for details.)

"Commissioner" means the chief executive officer of the Virginia Department of Transportation or ~~his~~ the chief executive officer's designee.

"Conceptual sketch" means a drawing of the proposed development showing the location of existing and proposed land uses, any existing and proposed transportation facilities, and any additional information required so that the reviewer can determine the appropriate functional classification of the proposed street ~~or streets~~ and verify if the connectivity standards have been met.

"Cul-de-sac" means a street with only one outlet and having an appropriate turnaround for a safe and convenient reverse traffic movement.

"Dam" means an embankment or structure intended or used to impound, retain, or store water, either as a permanent pond or as a temporary storage facility.

"Department" or "VDOT" means the Virginia Department of Transportation.

"Design speed" means a speed selected for purposes of design and correlation of those features of a street such as curvature, super elevation, and sight distance, upon which the safe operation of vehicles is dependent.

"Developer" means an individual, corporation, local government, or registered partnership engaged in the subdivision, improvement, or renovation of land.

"Discontinuance~~,~~" in all its forms~~,~~ means the legislative act of the Commonwealth Transportation Board, pursuant to § 33.2-908 of the Code of Virginia, that determines that a road no longer serves public convenience warranting its maintenance with funds at the disposal of the department.

"District administrator" means the department employee assigned the overall supervision of the departmental operations in one of the Commonwealth's construction districts.

"District administrator's designee" means the department employee ~~or employees~~ designated by the district administrator to oversee the implementation of this regulation.

"Drainage Manual" means the department's Drainage Manual, 2002.

"Dwelling unit" means a structure or part of a structure containing sleeping, kitchen, and bathroom facilities that is suitable for occupancy as a home or residence by one or more persons.

"Easement" means a grant of a right to use property of an owner for specific or limited purpose.

"FAR" means floor area ratio, which is the ratio of the total floor area of a building ~~or buildings~~ on a parcel to the land area of the parcel where the building ~~or buildings are~~ is located.

"Functional classification" means the assigned classification of a roadway based on the roadway's intended purpose of providing priority to through traffic movement and access to adjoining property as determined by the department, based on the federal system of classifying groups of roadways according to the character of service they are intended to provide.

"Governing body" means the board of supervisors of the county~~,~~ but may also mean the local governing body of a town or city, if appropriate, in the application of these requirements.

"Level of service" means a qualitative measure describing operational conditions within a vehicular traffic stream~~,~~ and their perception by motorists and passengers. For the purposes of these requirements, the applicable provisions of the Highway Capacity Manual, 2010 (TRB) shall serve as the basis for determining "levels of service."

"Locally controlled grade separation structure" means a grade separation structure that does not qualify for maintenance by the department but was established within the right-of-way of a street intended for state maintenance.

"Local official" means the representative of the governing body appointed to serve as its agent in matters relating to subdivisions and land development.

"Multiuse trail" means a facility designed and constructed for the purpose of providing bicycle and pedestrian transportation, that is located within a dedicated public way and is anticipated to be maintained by an entity other than the department.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are designated under 9VAC25-870-380 as municipal separate storm sewer systems.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and corresponding regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Network addition" means a group of interconnected street segments and intersections shown in a plan of development that are connected to the state highway system.

"Parking bay" means an off-street area for parking two or more vehicles that provides access to a public street.

"Parking lane" means an area, generally seven or eight feet in width, adjacent to and parallel with the travel lane of a roadway that is used for parking vehicles.

"Pavement Design Guide" means the Pavement Design Guide for Subdivision and Secondary Roads in Virginia, 2009 (VDOT).

"Permit Regulations" means the department's Land Use Permit Regulations (24VAC30-151).

"Phased development (streets)" means the method outlined in 24VAC30-92-80 (phased development of streets) whereby the acceptance of certain streets into the secondary system of state highways may be considered before being completely developed in accordance with all applicable requirements (e.g., two lanes of a four-lane facility are considered for acceptance in advance of lanes three and four being finished).

"Plan of development" means any site plat, subdivision plan, preliminary subdivision plat, conceptual subdivision sketch, or other engineered or surveyed drawings depicting proposed development of land and street layout, including plans included with rezoning proposals.

"Plans" means the standard drawings, including profile and roadway typical section, that show the location, character, dimensions, and details for the proposed construction of the street.

"Planting strip" means a section of land between the curb face and the pedestrian accommodation or shared use path.

"Plat" means the schematic representation of the land divided or to be divided.

"Projected traffic" means the number of vehicles, normally expressed in average daily traffic (ADT), forecast to travel over the segment of the street involved.

"Public street" means a street dedicated to public use and available to the public's unrestricted use without regard to the jurisdictional authority responsible for its operation and maintenance.

"Requirements" means the design, construction, public benefit, and related administrative considerations herein prescribed in this chapter for the acceptance of a street for maintenance by the department as part of the secondary system of state highways.

"Right-of-way" means the land, property, or interest therein, usually in a strip, acquired for or devoted to a public street designated to become part of the secondary system of state highways.

"Roadway" means the portion of the road or street within the limits of construction and all structures, ditches, channels, etc., necessary for the correct drainage thereof.

"Secondary system of state highways" means those public roads, streets, bridges, etc., established by a local governing body pursuant to § 33.2-705 of the Code of Virginia and subsequently accepted by the department for supervision and maintenance under the provisions of Article 3 (§ 33.2-324 et seq.) of Chapter 3 and Article 2 (§ 33.2-908 et seq.) of Chapter 9 of Title 33.2 of the Code of Virginia.

"Shared use path" means a facility that is designed and constructed according to the Road Design Manual, 2011 (VDOT), for the purpose of providing bicycle and pedestrian transportation.

"Specifications" means the department's Road and Bridge Specifications, 2007, revised 2011, including related supplemental specifications and special provisions.

"Standards" means the applicable drawings and related criteria contained in the department's Road and Bridge Standards, 2008, revised 2011.

"Storm sewer system" means a conveyance or system of conveyances and its appurtenances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or and storm drains.

"Street" means any roadway that is created as part of a plan of development, other subdivision of land, or is constructed by or at the direction of the local governing body and is a public way for purposes of vehicular traffic, including the entire area within the right-of-way.

"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development~~,~~; (ii) that consists of a short segment that is intended to serve current and future development by providing continuity and connectivity of the public street network~~,~~; (iii) that, based on the spacing between the stub out and other streets or stub outs~~,~~ and the current terrain, there is a reasonable expectation that connection with a future street is possible~~,~~; and (iv) that is constructed to the property line.

"Subdivision" means the division of a lot, tract, or parcel into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Any resubdivision of a previously subdivided tract or parcel of land shall also be interpreted as a "subdivision." The division of a lot or parcel permitted by § 15.2-2244 of the Code of Virginia will not be considered a "subdivision" under this definition, provided no new road or street is thereby established. However, any further division of such parcels shall be considered a "subdivision."

"Subdivision Street Design Guide" means Appendix B (1) of the Road Design Manual, 2011 (VDOT).

"Swale" means a broad depression within which stormwater may drain during inclement weather, but that does not have a defined bed or banks.

"Total maximum daily load" or "TMDL" is a water quality term that means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Traveled way" means the portion of the secondary street designated for the movement of vehicles, exclusive of shoulders, parking areas, turn lanes, etc.

"Tree well" means an opening on a sidewalk, generally abutting the curb, where a tree may be planted.

"Underground utility trunk easement" means an easement for the accommodation of an existing underground utility trunk line; specifically, those lines used to carry utilities, such as power, fuel, information, or water, from central facilities to smaller distribution networks but not used for distribution of the utility's services to individual customers.

"VPD" means vehicles per day.

"VPH" means vehicles per hour.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Watercourse" means a defined channel with bed and banks within which water flows, either continuously or periodically.

24VAC30-92-60. Public benefit requirements.

A. Public benefit. A street or network addition may only be accepted by the department for maintenance as part of the secondary system of state highways if it provides sufficient public benefit to justify perpetual public maintenance as defined by this chapter. A street shall be considered to provide sufficient public benefit if it meets or exceeds the public service, pedestrian accommodation, and connectivity requirements of this chapter.

B. Public service requirements. In the event the governing body requests the addition of a street or network addition before it meets these public service provisions, the district administrator will review each request on an individual case basis and determine if the acceptance of a street prior to normal service requirements is justified, provided the street or network addition meets all other applicable requirements, including the connectivity requirements, of this chapter. At the request of the local governing body, subject to approval by the district administrator, the public service requirements may be reduced for individual streets serving state or local economic development projects.

1. Individual streets. For the purpose of these requirements, public service may include~~, but is not necessarily limited to,~~ streets meeting one or more of the following situations:

a. Serves three or more occupied units with a unit being a single-family residence, owner-occupied apartment, owner-occupied residence in a qualifying manufactured home park, a stand-alone business, or single business entity occupying an individual building, or other similar facility. Also, streets serving manufactured home parks may only be considered when the land occupied by the manufactured home is in fee simple ownership by the residents of such manufactured home.

b. Constitutes a connecting segment between other streets that qualify from the point of public service.

c. Such street is a stub out.

d. Serves as access to schools, churches, public sanitary landfills, transfer stations, public recreational facilities, or similar facilities open to public use.

e. Serves at least 100 vehicles per day generated by an office building, industrial site, or other similar nonresidential land use in advance of the occupancy of three or more such units of varied proprietorship. Any addition under this provision shall be limited to the segment of a street that serves this minimum projected traffic and has been developed in compliance with these requirements.

f. Constitutes a part of the network of streets envisioned in the transportation plan or element of a locality's

comprehensive plan that, at the time of acceptance, serves an active traffic volume of at least 100 vehicles per day.

2. Multifamily, townhouse, and retail shopping complexes. A through street that serves a multifamily building may be considered for maintenance as part of the secondary system of state highways if it is deemed by the department to provide a public service and provided it is well defined and the district administrator's designee determines that it is not a travel way through a parking lot.

Entrance streets and the internal traffic circulation systems of retail shopping complexes qualify only if more than three property owners are served and the district administrator's designee determines that ~~it~~ the street or system is not a travel way through a parking lot.

3. Network additions. A network addition shall be considered to provide service if each street within the addition meets at least one of the criteria in subdivision 1 of this subsection.

4. Special exceptions. There may be other sets of circumstances that could constitute public service. Consequently, any request for clarification regarding unclear situations should be made in writing to the district administrator's designee.

C. Connectivity requirements. All streets in a development as shown in a plan of development shall be considered for acceptance into the secondary system of state highways as one or multiple network additions. However, streets with a functional classification of collector and above may be eligible for acceptance as individual streets.

For the purposes of this subsection, connection shall mean a street connection to an adjacent property or a stub out that will allow for future street connection to an adjacent property.

The connectivity requirements of this chapter shall not apply to the following: a frontage road or reverse frontage road as defined in the Access Management Regulations (~~24VAC30-73~~ 24VAC30-73), streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.2-335 and 33.2-336 of the Code of Virginia, or streets petitioned for acceptance into the secondary system of state highways through the Commonwealth Transportation Board's Rural Addition Policy, provided such streets were constructed prior to January 1, 2012.

1. Stub out connection standard. If a stub out ~~or stub outs~~ maintained by the department ~~adjoin~~ adjoins the property of a development with a network addition or individual street proposed for acceptance into the secondary system of state highways, such network addition or individual street must connect to such stub out ~~or stub outs~~ to be eligible for acceptance into the secondary system of state highways. The district administrator may waive this requirement if the existing stub out is of such design as to make such a connection unsafe.

2. Multiple connections in multiple directions standard. The streets within a network addition may be accepted into the secondary system of state highways if the network addition provides at least two external connections, one of which must be to a publicly maintained highway and the other providing a connection to a different highway or a stub out to an adjoining property. Local street stub outs generally should not exceed 500 feet in length. If a stub out is constructed, the applicant shall post a sign in accordance with the department's standards that indicates that such stub out is a site for a future roadway connection. Nothing in this chapter shall be construed as to prohibit a stub out from providing service to lots within a development. The district administrator's designee shall waive or modify the second required connection of this standard if one or more of the following situations renders the provision of such connection impracticable:

a. The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;

b. The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, ~~providing~~ provided, however, that in no case shall retail, residential, or office uses be considered incompatible with other retail, residential, or office uses; ~~or~~

c. There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, ~~such as~~ including the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted~~.~~; or

d. The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.

3. Additional connections standard. Network additions providing direct access to (i) more than 200 dwelling units or (ii) lots whose trip generation is expected to be over 2,000 VPD may be accepted into the secondary system of state highways if the network addition provides an additional external connection beyond that required under subdivision 2 of this subsection for each additional 200 dwelling units or

2,000 VPD or portion of each over and above the initial 200 dwelling units or 2,000 VPD. For the purposes of this requirement, each external connection of collector facilities that ~~are~~ is an ~~elements~~ element of the county's transportation plan and to which there is no direct lot access provided counts as two external connections.

a. The district administrator's designee shall waive or modify this additional connections standard if one or more of the following situations renders the provision of such connection impracticable:

~~a.~~ (1) The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;

~~b.~~ (2) The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, ~~providing~~ provided, however, that in no case shall retail, residential, or office uses be considered incompatible with other retail, residential, or office uses;

~~c. In developments with~~ (3) The development has a median density of more than eight lots per acre or ~~with~~ a FAR of 0.4 or higher, ~~where~~ and the number of connections provided would be contrary to the public interest; or

~~d.~~ (4) There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, ~~such as~~ including the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.

(5) The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.

b. The district administrator's designee may also waive or modify this additional connections standard if, in the written opinion of the applicant and locality's chief executive or designee, the provision of such connection is impracticable or unwarranted for any of the following reasons: (i) there are topographic constraints; (ii) the provision is incompatible with an existing adjoining development; (iii) the adjoining property is completely built out as envisioned in the locality's comprehensive plan with no expectation of redevelopment in the next 20 years and there is no stub out (either constructed or platted) to the property served by the network addition; (iv) the connection would impact the developer's ability to comply with any local ordinances related to the preservation of open space or trees during the land development process, after a good faith effort to comply with connectivity requirements and local ordinances; (v) the connection would require work outside the right-of-way (existing or proposed) or easements on an adjoining property outside of the control of the developer; or (vi) other factors as determined by the applicant and locality's chief executive or designee. The district administrator's designee shall respond to requests for such connectivity exceptions within 30 calendar days of receipt of a completed VDOT request form.

4. Individual street standard. Streets that are not part of a network addition shall be accepted into the secondary system of state highways upon petition by the local governing body as long as they meet the requirements of the applicable design standard and one terminus of the street is an intersection with a roadway that is part of the existing publicly maintained highway network and the other terminus is either an intersection with a roadway that is part of the existing publicly maintained highway network or a stub out to an adjoining property. Streets considered for individual acceptance should be (i) streets that provide a connection between two existing publicly maintained streets or (ii) streets with a functional classification as collector or higher.

5. Connectivity exceptions. Where the ~~above~~ standards for waiver or modification described in this section have been met, the connectivity requirements for a network addition shall be waived or modified by the district administrator's designee. The developer shall submit any request for connectivity waiver or modification to the district administrator's designee with a copy to the local official. The district administrator's designee shall respond to requests for connectivity exceptions within 30 calendar days of receipt of a request. For projects where a scoping meeting pursuant to the Traffic Impact Analysis Regulations (24VAC30-155) will be held, requests for exceptions and supporting data should be presented and discussed.

6. In instances where there is potential for conflict between this chapter and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73), the following shall apply:

a. For streets with a functional classification of collector where additional connections necessary to meet the connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, such spacing standards shall be modified by the district administrator's designee to allow for such connection. Such connection ~~or connections~~ shall be required to meet intersection sight distance standards specified in the Road Design Manual, 2011 (VDOT).

b. For streets with a functional classification of minor arterial where additional connections necessary to meet the connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the district administrator's designee shall, in consultation with the developer and the local official, either modify the applicable spacing standards to allow for such connection ~~or connections~~, or modify the connectivity requirements of this chapter to account for the inability to make such connection. Such connection shall be required to meet intersection sight distance as specified in the Road Design Manual, 2011 (VDOT).

c. For streets with a functional classification of principal arterial where additional connections necessary to meet the external connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the connectivity requirements shall be modified by the district administrator's designee to account for the inability to make such connection.

7. Failure to connect. If a local government approves a subdivision plat for a new development that does not connect to a stub out ~~or stub outs~~ in an adjacent development and such development's network addition or individual street would meet the applicable requirements of this chapter if it connected to a stub out ~~or stub outs~~ in the adjacent development, the network addition or individual street may or may not be accepted into the secondary system of state highways for maintenance pursuant to the authority granted to the district administrators in accordance with 24VAC30-92-100.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (24VAC30-92)

Secondary Street Acceptance Requirements Exception Form (eff. 5/2024)

VA.R. Doc. No. R24-7622; Filed May 28, 2024, 3:28 p.m.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

STATE BOARD OF EDUCATION

Title of Document: 2024-2025 Board of Education Approved Industry Certifications, Occupational Competency Assessments, and Professional Licenses.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

STATE BOARD OF HEALTH

Titles of Documents: Virginia Conrad 30 Waiver Program 2023-2025 Guidelines.

Virginia State Loan Repayment Program 2022-2025 Eligibility Guidelines.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Olivette Burroughs, Statewide Health Workforce Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7431, or email olivette.buroughs@vdh.virginia.gov.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Title of Document: Enterprise Architecture Standard.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Joshua Heslinga, Policy Planning Manager III, Virginia Information Technologies Agency, 7325 Beaufont Springs Drive, Richmond, VA 23225, telephone (804) 551-2902, or email joshua.heslinga@vita.virginia.gov.

BOARD OF PHARMACY

Title of Document: Use of Automated Dispensing Devices in Certain Facilities.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: Fish Kill Investigation Guidance Third Edition.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Tony Cario, Department of Environmental Quality, 111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 814-7774, or email anthony.cario@deq.virginia.gov.

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Titles of Documents: PPD 22-01 Chapter 7.7 Transition Services.

PPD 22-03 Vocal Rehabilitation Policy Updates.

PPD DS-22-05 Low Vision Manual Policy.

PPD DS 22-06 Change of Tutor Rates.

PPD DS 22-07 Low Vision Manual Update and Revised Forms.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Susan K. Davis, Senior Policy Analyst, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email susan.davis@dbvi.virginia.gov.

VIRGINIA EMPLOYMENT COMMISSION

Titles of Documents: Employer as Claimant Interoffice Communication.

Guide to Effective Unemployment Insurance Adjudication.

Precedent Decision Manual.

Precedent Decision Manual Supplement.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Ashley Ervin, Director of Policy and Legislative Affairs, Virginia Employment Commission, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 774-2713, or email ashley.ervin@vec.virginia.gov.

COMMISSION ON LOCAL GOVERNMENT

Titles of Documents: Agreements Defining Annexation Rights.

Annulment of Town Charter.

Boundary Adjustments by Agreement.

Consolidation of Two or More Units of Local Government.

Municipal Annexation.

Reversion from City to Town Status.

Town Incorporation.

Voluntary Settlement Agreements.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: LeGrand Northcutt, Senior Policy Analyst, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Richmond, VA 23219, telephone (804) 310-7151, or email legrand.northcutt@dhcd.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Titles of Documents: Class A Third Party Tester Driving School Curriculum Requirements.

Commercial Driver Training School Curriculum Requirements.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, or email nicholas.megibow@dmv.virginia.gov.

BOARD OF PHARMACY

Title of Document: Guidance on Emergency Medical Services Drug Kits.

Public Comment Deadline: July 17, 2024.

Effective Date: July 18, 2024.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Greene County

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Greene County for violations of the State Water Control Law and regulations at the Rapidan wastewater treatment plant in Greene County. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept comments by email or postal mail from June 17, 2024, to July 17, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Southwest Regional Office, Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Review and Public Comment on Amendments to the State Plan Rate for Early and Periodic Screening, Diagnosis, and Treatment Therapeutic Group Homes

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 288 EEEEE of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS will be making the following change to Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80):

The state plan is being revised to indicate that the rate for Early and Periodic Screening, Diagnosis, and Treatment therapeutic group homes, which serve individuals both a behavioral health diagnosis and a diagnosis of either intellectual or developmental disability, will be set as of July 1, 2024. The expected increase in annual fee-for-service aggregate expenditures is $153,161 in state general funds and $160,823 in federal funds in federal fiscal year 2024.

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, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Implement Supplemental Disproportionate Share Hospital Redistribution Methodology

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 288 MM of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS will be making the following change to Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70):

The state plan is being revised to implement a supplemental disproportionate share hospital (DSH) redistribution methodology for DSH funds that allows the redistribution of excess DSH payments to other eligible DSH hospitals that have not met their uncompensated care costs. This supplemental redistribution shall be budget neutral and not use state funds in excess of those already appropriated for DSH payments. There is no expected increase or decrease in annual fee-for-service aggregate expenditures in federal fiscal year 2024 or 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Revise Institutional Provider Reimbursement

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

DMAS will be making the following changes to Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care (12VAC30-70):

In accordance with Item 288 HH 5 of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being amended to revise reimbursement methodologies for psychiatric residential treatment facility (PRTF) rates to implement inflation increases for each fiscal year to be effective July 1, 2024. Inflation rates shall be tied to the Nursing Facility Moving Average as established by IHS Markit or its successor. The most recent four quarters will be averaged to create the PRTF inflation rate.

There is no expected increase or decrease in annual fee-for-service aggregate expenditures in federal fiscal year 2024 or 2025.

To correct language to be consistent with current DMAS policies and regulations, the state plan is being revised to remove two phrases that pertain to adjustment factors for Type Two hospitals that were not authorized by the Virginia General Assembly or approved by the Centers for Medicare and Medicaid Services for addition to the state plan. There are no costs associated with these changes because the phrases were unauthorized errors.

There is no expected increase or decrease in annual fee-for-service aggregate expenditures in federal fiscal year 2024 or 2025.

In accordance with Item 288 PP 2 of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being revised to make hospital supplemental payments for freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 to replace payments that have been reduced due to the federal regulation on the definition of uncompensated care costs effective June 2, 2017, equal to the greater of what would have been paid to the freestanding children's hospitals under the current uncompensated care formula or $16 million annually, the average due by formula prior to Medicaid expansion without regard to the uncompensated care cost limit. The expected increase in annual aggregate fee-for-service expenditures is $1,960,400 in state general funds and $2,039,600 in federal funds in federal fiscal year 2024 and $7,841,600 in state general funds and $8,158,400 in federal funds in federal fiscal year 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Update Noninstitutional Provider Reimbursement

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 288.BBBB.2 of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS will be making the following changes to Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80). the state plan is being revised to increase reimbursement rates for dental services by 3.0%. The expected increase in annual fee-for-service aggregate expenditures is $664,129 in state general funds, $64,314 in special funds, and $1,276,171 in federal funds in federal fiscal year 2024; and $4,083,634 in state general funds, $393,599 in special funds, and $8,184,610 in federal funds in federal fiscal year 2025.

In accordance with Item 288 GGGGG 1 of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being revised to increase the rates for agency-directed and consumer-directed personal care under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit by 2.0%. A corresponding rate increase of 2.0% will be provided for these services and for companion and respite services provided under home and community-based waivers; however, the increase is not included in a state plan amendment but via waiver documentation. The expected increase in annual fee-for-service aggregate expenditures is $104 in state general funds and $109 in federal funds in federal fiscal year 2024 and $625 in state general funds and $651 in federal funds in federal fiscal year 2025.

In accordance with Item 288 SSSS of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being revised to update the reimbursement methodology for outpatient rehabilitation services to the Resource Based Relative Value Scale. Any changes to the reimbursement methodology shall be budget neutral. To ensure and maintain budget neutrality, a budget neutrality factor shall be applied to any rate calculations. There is no expected increase or decrease in annual fee-for-service aggregate expenditures in federal fiscal year 2024 or 2025.

In accordance with Item 288 XXXX of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being revised to update the rates for consumer-directed facilitation services under EPSDT based on the most recent rebasing estimates as follows: Consumer-Directed (CD) Management Training shall be increased to $90.14 per hour in Northern Virginia and to $80.91 per hour in the rest of the state; CD Initial Comprehensive Visit shall be increased to $360.54 per visit in Northern Virginia and to $323.64 per visit in the rest of the state; CD Routine Visit shall be increased to $112.67 per visit in Northern Virginia and to $101.14 per visit in the rest of the state; and CD Reassessment Visit shall be increased to $180.27 per visit in Northern Virginia and to $161.82 per visit in the rest of the state. The expected increase in annual fee-for-service aggregate expenditures is $398 in state general funds and $418 in federal funds in federal fiscal year 2024 and $2,800 in state general funds and $2,913 in federal funds in federal fiscal year 2025.

In accordance with Item 288 YYYY of Chapter 2 of the 2024 Acts of Assembly, Special Session I, the state plan is being revised to set the reimbursement rate to 100% of the Medicare rural rates or 100% of nonrural rates if a rural rate does not exist for specific durable medical equipment products, including enteral products and supplies and in the following categories in the DMAS fee schedule: feeding kits and tubes and nutrition kits and feeding tubes. The expected increase in annual fee-for-service aggregate expenditures is $7,966 in state general funds, $136 in special funds, and $9,587 in federal funds in federal fiscal year 2024; and $48,024 in state general funds, $815 in special funds, and $58,114 in federal funds in federal fiscal year 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Amend Nursing Facility Value-Based Purchasing Program

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

DMAS will be making the following changes to Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90):

In accordance with the General Assembly, DMAS revised the state plan in 2022 and 2023 to establish a unified, value-based purchasing (VBP) program that includes enhanced funding for nursing facilities that meet or exceed performance or improvement thresholds as developed, reported, and consistently measured by DMAS in cooperation with participating facilities. During the first year of the program, half of the available funding was distributed to participating nursing facilities to be invested in functions, staffing, and other efforts necessary to build their capacity to enhance the quality of care furnished to Medicaid members. This funding was administered as a Medicaid rate add-on. The remaining funding was allocated based on performance criteria as designated under the nursing facility VBP program. During the second year of the program, the amount of funding devoted to nursing facility quality of care investments was 25% of available funding.

In accordance with Item 288 QQQ 2 b of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS is amending the

state plan for the third year of the nursing facility VBP program. During the third year of the program, 100% of payments will be disbursed to participating nursing facilities that qualify for the enhanced funding based on performance criteria. There is no expected increase or decrease in annual aggregate fee-for-service expenditures in federal fiscal year 2024. The expected increase in annual aggregate fee-for-service expenditures is $911,586 in state general funds and $948,414 in federal funds in federal fiscal year 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Adjust Supplemental Payments for Acute Care Hospital Chain with Level One Trauma Center

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; In-Patient Hospital Services (12VAC30-70-291).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impacts of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review upon request. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 288 OO 10 of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS will be making the following changes to Methods and Standards for Establishing Payment Rates; In-Patient Hospital Services (12VAC30-70):

The state plan is being revised to make supplemental payments through an adjustment to the formula for indirect medical education reimbursement, using managed care discharge days, for an acute care hospital chain with a level one trauma center in the Tidewater Metropolitan Statistical Area in 2020, upon the execution of affiliation agreements with public entities that are capable of transferring funds to the department for purposes of covering the nonfederal share of the authorized payments. Such public entities would enter into an interagency agreement with DMAS for this purpose. Public entities are authorized to use general fund dollars to accomplish this transfer. The funds to be transferred must comply with 42 CFR 433.51 and 42 CFR 433.54. As part of the interagency agreements, the department shall require the public entities to attest to compliance with applicable Centers for Medicare and Medicaid Services (CMS) criteria. DMAS shall also require any private hospital and related health systems receiving payments under this item to attest to compliance with applicable CMS criteria. The expected increase in annual fee-for-service aggregate expenditures is $568,202 in state general funds and $591,157 in federal funds in federal fiscal year 2024 and $2,272,807 in state general funds and $2,364,628 in federal funds in federal fiscal year 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Opportunity for Review and Public Comment on Amendments to the State Plan to Include Supplemental Payments to Private Hospitals for Physician Services

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing within 30 days of this notice publication to the contact listed and such comments are available for review at the same address. Comments may also be submitted at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with the Item 288 OO 9 a, b, and c of Chapter 2 of the 2024 Acts of Assembly, Special Session I, DMAS will be making the following changes to Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80):

The state plan is being revised to make supplemental payments to private hospitals and related health systems that intend to execute affiliation agreements with public entities that are capable of transferring funds to DMAS for purposes of

covering the non-federal share of the authorized payments. Virginia community colleges, Virginia public institutions of higher education, local governments, and instrumentalities of local government are public entities that are authorized to transfer funds to the department for purposes of covering the non-federal share of the authorized payments. Such public entities would enter into an interagency agreement with the department for this purpose.

DMAS shall have the authority to make the supplemental payments to private hospitals for physician services effective July 1, 2024. No payment shall be made without approval from the Centers for Medicare and Medicaid Services (CMS) and an interagency agreement with a public entity capable of transferring the non-federal share of authorized payments to DMAS. The funds to be transferred must comply with 42 CFR 433.51 and 42 CFR 433.54. Such funds may not be paid from any private agreements with public entities that are in excess of fair market value or that alleviate preexisting financial burdens of such public entities. Public entities are authorized to use general fund dollars to accomplish this transfer. As part of the interagency agreements, DMAS shall require the public entities to attest to compliance with applicable CMS criteria. DMAS shall also require any private hospital and related health systems receiving payments under this section to attest to compliance with applicable CMS criteria. Within 30 days of notification by DMAS of any deferral or disallowance issued by CMS regarding the supplemental or managed care directed payment arrangement, the hospital provider will return the entire balance of the payment to DMAS. If the hospital does not return the entire balance of the payment to DMAS within the specified timeframe, a judgment rate of interest set forth in § 6.2-302 of the Code of Virginia will be applied to the entire balance, regardless of whatever portion has been repaid. In addition, the non-federal share of the agency's administrative costs directly related to administration of the programs authorized in this notice, including staff and contractors, shall be funded by participating public entities. These funds shall be deposited into a special fund created by the comptroller and used to support the administrative costs associated with managing this program. Any funds received for this purpose but unexpended at the end of the fiscal year shall remain in the fund for use in accordance with this provision.

The purposes to which the additional payments authorized shall be applied include (i) increasing and enhancing access to outpatient care for Medicaid recipients, (ii) stabilizing and supporting critical health care workforce needs, and (iii) advancing the DMAS health and quality improvement goals; these shall contain specific measurable outcomes that will be approved and monitored by the department quarterly. Payment shall be dependent on progress toward goal attainment on all three purposes. Participating organizations must submit quarterly updates and annual reports on programs to DMAS no later than October 1. The expected increase in annual aggregate fee-for-service expenditures is $1,207,429 in state general funds and $1,256,209 in federal fiscal year 2024. The expected increase in annual aggregate fee-for-service expenditures is $4,829,714 in state general funds and $5,024,835 in federal funds in federal fiscal year 2025.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.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.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information

ERRATA

STATE BOARD OF EDUCATION

Title of Regulation: **8VAC20-132. Virginia Standards of Accreditation.**

Publication: 40:19 VA.R. 1590-1627 May 6, 2024.

Correction to Proposed Regulation:

Pages 1601, 8VAC20-132-51 B 2, table, replace published table with the following table:

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English (reading and writing)	4	2
Mathematics	3	1
Laboratory Science	3	1
History and Social Science	3	1
Health and Physical Education	2	
World Language, Fine Arts, or Career and Technical Education	2	
Economics and Personal Finance	1	
Electives	4	
Total	22	5

Discipline Area	Specifications
Mathematics	Courses completed to satisfy this requirement shall include at least two different course selections from among: algebra I, geometry, algebra functions, and data analysis, algebra II, or other mathematics courses approved by the board to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a mathematics course credit.
Laboratory Science	Courses completed to satisfy this requirement shall include course selection from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma and shall include interdisciplinary courses that incorporate Standards of Learning content from multiple academic areas. The board shall approve courses to satisfy this requirement. Per the Standards of Quality, a computer science course credit earned by students may be considered a science course credit. A laboratory science verified credit may be awarded to students who complete a career and technical education program sequence and (i) pass two examinations or occupational competency assessments in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, trade, or professional association; (ii) acquire two professional licenses in a career and technical education field from the Commonwealth of Virginia; or (iii) pass one examination or competency assessment from clause (i) and acquire one license from clause (ii). The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.
History and Social Science	Courses completed to satisfy this requirement shall include Virginia and U.S. history, Virginia and U.S. government, and one course in either world history or geography or both.

	The board shall approve courses to satisfy this requirement.
World Language, Fine Arts, or Career and Technical Education	Per the Standards of Quality, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education. Per the Standards of Quality, a computer science course credit earned by students may be considered a career and technical course credit.
Electives	Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.
Additional Requirements for Graduation	
Advanced Placement, Honors, or International Baccalaureate Course or Career and Technical Education Credential	In accordance with the Standards of Quality, students shall (i) complete an Advanced Placement, honors, International Baccalaureate, or dual enrollment course; (ii) complete a high-quality work-based learning experience, as established by board guidance on work-based learning; or (iii) earn a career and technical education credential approved by the board, except when a career and technical education credential in a particular subject area is not readily available or appropriate or does not adequately measure student competency, in which case the student shall receive satisfactory competency-based instruction in the subject area to satisfy the standard diploma requirements. The career and technical education credential, when required, could include the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness assessment.
Virtual Course	Students shall successfully complete one virtual course, which may be a non-credit-bearing course or a required or elective credit-bearing course that is offered online.
Training in emergency first aid, cardio-pulmonary resuscitation (CPR), and the use of automated external defibrillators (AED)	Students shall be trained in emergency first aid, CPR, and the use of AED, including hands-on practice of the skills necessary to perform cardiopulmonary resuscitation. Students with an individualized education plan (IEP) or 504 Plan that documents that they cannot successfully complete this training shall be granted a waiver from this graduation requirement, as provided in 8VAC20-131-420 B.
Demonstration of the five Cs	Students shall acquire and demonstrate foundational skills in critical thinking, creative thinking, collaboration, communication, and citizenship in accordance with the Profile of a Virginia Graduate approved by the board.

VA.R. Doc. No. R24-7679; Filed June 4, 2024, 10:32 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity.**

Publication: 40:15 VA.R. 1257-1319 March 11, 2024.

Correction to Final Regulation:

Page 1319, 9VAC25-151-400 Part V E 2 b, after "in Part" replace "I B 8 a" with "[~~I B 8 a~~ V B]" and after "under Part" replace "I B 8 c" with "[~~I B 8 c~~ V D]"

VA.R. Doc. No. R22-7009; Filed May 20, 2024, 1:20 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services.**

Publication: 40:20 VA.R. 1700-1760 May 20, 2024.

Correction to Final Regulation:

Page 1724, 12VAC30-120-930 I, second column, subdivision 2, line 7, after "~~or respite~~" replace "care" with "[~~care~~]"

VA.R. Doc. No. R18-5055; Filed May 28, 2024, 10:01 a.m.