VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich,** Vice Chair; **Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

December 2018 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:8	November 19, 2018 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHYSICAL THERAPY

Initial Agency Notice

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy**.

Statutory Authority: §§ 54.1-2400 and 54.1-3475 of the Code of Virginia.

Name of Petitioner: Rosemarie Curley.

Nature of Petitioner's Request: To add the National Strength and Conditioning Association to list of organizations approved as continuing education providers.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on November 12, 2018. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov. Comment will be requested until December 12, 2018. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting scheduled for February 19, 2019, and the petitioner will be informed of the board's decision after that meeting.

Public Comment Deadline: December 12, 2018.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R19-14; Filed October 10, 2018, 2:32 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care**. The purpose of the proposed action, per Item 303 X of Chapter 2 of the 2018 Acts of Assembly, Special Session I, is to clarify that community mental health rehabilitative services must be rendered by individuals with appropriate qualifications and credentials, including proof of licensure or registration from the Department of Health Professions if applicable.

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

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

Public Comment Deadline: December 12, 2018.

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

VA.R. Doc. No. R19-5371; Filed October 23, 2018, 2:45 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Final Regulation

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

Title of Regulation: **1VAC30-41. Regulation for the Certification of Laboratories Analyzing Drinking Water (amending 1VAC30-41-55).**

Statutory Authority: §§ 2.2-1102 and 2.2-1105 of the Code of Virginia

Effective Date: December 12, 2018.

Agency Contact: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Summary:

The amendments update the Code of Federal Regulations requirements for sampling, analytical methodology, and laboratory certification of drinking water laboratories, which are incorporated by reference, to July 1, 2018.

1VAC30-41-55. Incorporation by reference - Code of Federal Regulations.

A. The sampling, analytical methodology, and laboratory certification requirements of 40 CFR 141 and 40 CFR 143 in effect as of July 1, ~~2013~~ 2018, are incorporated by reference into this chapter.

B. The specific sampling, analytical methodology, and laboratory certification requirements incorporated by reference are listed as follows by category for information purposes:

1. Inorganic chemistry: 40 CFR 141.23, 40 CFR 141.89, and 40 CFR 141.131.

2. Organic chemistry: 40 CFR 141.24 and 40 CFR 141.131.

3. Microbiology: 40 CFR 141.21, 40 CFR 141.74, 40 CFR 141.174, 40 CFR 141.402(c)(2), 40 CFR 141.704, ~~and~~ 40 CFR 141.705, and 40 CFR 141.852. 40 CFR 136.3(a) for E. coli requirements under 40 CFR 141.704.

4. Radiochemistry: 40 CFR 141.25.

5. Alternative testing methods: 40 CFR Part 141, Subpart C, Appendix A.

6. Test methods specified for secondary maximum contaminant levels: 40 CFR 143.4.

C. The exceptions to the requirements for laboratory certification in 40 CFR 141.28, 40 CFR 141.74(a), 40 CFR 141.89(a)(1), 40 CFR 141.131(b)(3), and 40 CFR 141.131(c)(3) are incorporated by reference into this chapter.

VA.R. Doc. No. R19-5665; Filed October 19, 2018, 11:49 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: **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-30, 4VAC20-910-40, 4VAC20-910-45).**

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

Effective Date: November 2, 2018.

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

Summary:

The amendments increase the trip limit to 28,500 pounds for the commercial Winter II period fishery of October 1 through December 31 and make administrative changes.

4VAC20-910-30. Minimum size limits.

A. The minimum size limit of scup harvested by commercial fishing gear shall be nine inches in total length.

B. The minimum size limit of scup harvested by recreational fishing gear including hook and line, rod and reel, spear, and gig shall be eight inches in total length.

C. It shall be unlawful for any person to catch and retain possession of any scup of ~~a total length less~~ smaller than the designated minimum ~~sizes~~ size limit, as described, respectively, in subsections A and B of this section.

D. It shall be unlawful for any person to sell, trade, barter, or offer to sell, trade, or barter any scup less than nine inches in total length.

4VAC20-910-40. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting scup or to land in Virginia scup harvested by fish pots ~~which~~ that are not constructed as follows:

1. With an escape vent of 2.25 inches square dimension or 3.1 inches diameter circular dimension~~,~~; and

2. With hinges and fasteners on one panel or door made of one of the following materials:

a. Untreated hemp, jute, or cotton string of 3/16 inches diameter or smaller~~,~~;

b. Magnesium alloy, timed float releases or similar magnesium alloy fasteners~~,~~; or

c. Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

4VAC20-910-45. Possession limits and harvest quotas.

A. During the Winter I period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 50,000 pounds of scup~~.~~;

2. Land in Virginia more than a total of 50,000 pounds of scup during each consecutive seven-day landing period, with the first seven-day period beginning on January 1~~.~~; or

~~B.~~ 3. When it is projected and announced that 80% of the coastwide quota for ~~this~~ the Winter I period has been attained, ~~it shall be unlawful for any person to~~ possess aboard any vessel or ~~to~~ land in Virginia more than a total of 1,000 pounds of scup.

~~C.~~ B. During the Winter II period October 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than ~~18,000~~ 28,500 pounds of scup.

~~D.~~ C. During the Summer period May 1 through September 30 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 14,296 pounds, and it shall be unlawful for any person to possess aboard any vessel in Virginia more than 5,000 pounds of scup.

~~E.~~ D. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

~~F.~~ E. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

~~G.~~ F. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 30 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 30. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R19-5736; Filed October 31, 2018, 10:15 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-995. Pertaining to Commercial Hook-and-Line Fishing (amending 4VAC20-995-15, 4VAC20-995-20, 4VAC20-995-30).**

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

Effective Date: November 2, 2018.

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

Summary:

The amendments (i) create definitions of "immediate family member" and "crew member list"; (ii) clarify eligibility for a license, license transfers, and crew member list requirements; and (iii) require a verified crew member list be on board the vessel during commercial hook-and-line fishing activities.

4VAC20-995-15. ~~Definition~~ Definitions.

The following ~~word~~ terms when used in this chapter shall have the following ~~meaning~~ meanings unless the context indicates otherwise:

"Crew member list" means those individuals registered to participate in commercial hook-and-line fishing activities with one or more individuals who possess a valid commercial hook-and-line license.

"Immediate family member" means spouse, sibling, parent, child, grandparent, or grandchild.

"Year" means a calendar year.

4VAC20-995-20. Entry limitation; catch restrictions; transfers.

A. The sale of commercial hook-and-line licenses shall be limited to registered commercial fishermen meeting either of the following two requirements, except as provided by subsection B of this section:

1. The fisherman shall ~~have held a 1996~~ possess a valid Commercial Fisherman Registration License and eligibility for the commercial hook-and-line license ~~or a 1997 commercial hook-and-line license that was purchased prior to August 26, 1997, provided the fisherman has reported~~ by reporting sales of at least 1,000 pounds of seafood during the course of the previous two calendar years as documented by the commission's mandatory harvest reporting program.

2. The fisherman shall ~~hold~~ possess a valid and current striped bass permit issued by the Marine Resources Commission in accordance with 4VAC20-252.

B. The fisherman otherwise qualified under subdivision A 1 of this section shall ~~have been~~ be granted an exemption from the requirement to report sales of at least 1,000 pounds of seafood during the course of the previous two calendar years as documented by the commission's mandatory harvest reporting system~~.~~ when the following conditions are met:

1. Exemptions shall be solely based ~~only~~ on a documented medical ~~hardships~~ condition or active military ~~leave~~ service that prevented the fisherman from fully satisfying the requirements described in subdivision A 1 of this section~~.~~; and

2. Exemptions ~~may~~ shall only be granted by the commissioner or ~~his~~ the commissioner's designee.

C. The maximum number of general hook-and-line licenses is established as 200.

D. A random drawing for available commercial hook-and-line licenses shall be held annually should the number of licensees ~~at the start of any~~ by the fifth day of January in the current calendar year be less than 200. Commercial Fisherman Registration Licensees who have reported sales of at least 1,000 pounds of seafood harvest during the course of the previous two calendar years by the ~~5th~~ fifth day of January of the current calendar year, as documented by the commission's mandatory harvest reporting program, but who do not currently possess a commercial hook-and-line license~~,~~ shall be eligible for the random drawing.

E. Persons who are eligible to purchase a commercial hook-and-line license by meeting the provisions of subdivision A 2 of this section may take only striped bass by commercial hook and line.

F. Any person licensed for commercial hook and line under the provisions of subdivision A 1 of this section may transfer such license to any registered commercial fisherman, provided:

1. The transferee has a Commercial Fisherman Registration License.

2. ~~The~~ Both the transferee ~~has~~ and transferor have reported sales of at least 1,000 pounds of seafood harvest during the course of the previous two calendar years by the ~~5th~~ fifth day of January~~,~~ as documented by the commission's mandatory harvest reporting program.

3. All transfers shall be documented on a form provided by the Marine Resources Commission and approved by the Marine Resources Commissioner or ~~his~~ the commissioner's designee. Upon approval, the person entering the commercial hook-and-line fishery shall purchase a commercial hook-and-line license in his own name.

4. Transfers of commercial hook-and-line licenses between immediate family members shall be exempt from the requirements provided in subdivision 2 of this subsection.

5. No commercial hook-and-line license shall be transferred more than once per calendar year.

4VAC20-995-30. Prohibitions.

A. It shall be unlawful for any person licensed under the provisions of 4VAC20-995-20 A 1 or A 2 as a commercial hook-and-line fisherman to do any of the following unless otherwise specified:

1. Fail to be on board the vessel when that vessel is operating in a commercial hook-and-line fishing capacity.

2. Have more than three crew members~~, who need not be registered commercial fishermen,~~ on board the vessel at any given time provided that:

a. Crew members do not need to be licensed commercial fishermen but shall be registered on a crew member list with the commission on an annual basis and in advance of any fishing in any year; ~~except that one~~

b. One crew member per vessel ~~need~~ needs not be registered on a crew member list;

~~b.~~ c. The maximum number of crew members registered to any commercial hook-and-line licensee at any one time shall be 15; ~~and~~

~~c.~~ d. Any crew registration list submitted by any commercial hook-and-line fisherman may be revised once per calendar year~~.~~; and

e. A legible and approved crew member list must be maintained on board the vessel during all commercial hook-and-line activities.

3. Fail to display prominently the commercial hook-and-line ~~license plates~~ decals, as provided by the commission, on the starboard and port sides of the vessel.

4. Fish within 300 yards of any bridge, bridge-tunnel, jetty or pier from 6 p.m. Friday through 6 p.m. Sunday.

5. Fish within 300 yards of any fixed fishing device.

6. Harvest black drum within 300 yards of the Chesapeake Bay-Bridge-Tunnel at any time.

7. Fish recreationally on any commercial hook and line vessel during a commercial fishing trip.

8. Use any hydraulic fishing gear or deck-mounted fishing equipment.

9. Use any fishing rod and reel or hand line equipped with more than six hooks.

10. Fish commercially with hook and line aboard any vessel licensed as a charter boat or head boat while carrying customers for recreational fishing.

B. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during Thanksgiving Day ~~and~~ through the following day ~~or~~. It shall be unlawful for any person to use a commercial hook and line during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through 6 a.m. Friday.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-995)

~~Commercial Hook and Line License Transfer Application (rev. 12/08).~~

Commercial Hook-and-Line License Transfer Application (rev. 4/2011)

VA.R. Doc. No. R19-5737; Filed October 31, 2018, 12:30 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-120. Regulated Medical Waste Management Regulations.**

Agency Contact: Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC20-120)

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement (Cover Sheet), DEQ Form DISC-01 (rev. 4/2011)~~

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel, DEQ Form DISC-02 (rev. 4/2011)~~

~~Request for Certification (Local Government), DEQ Form CERT-01 (rev. 10/2017)~~

~~Petition for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP-01 (rev. 7/2011)~~

Solid Waste Management Facility Permit Applicant's Disclosure Statement (Cover Sheet), DEQ Form DISC-01 (rev. 8/2018)

Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel Statement, DEQ Form DISC-02 (rev. 8/2018)

Local Government Certification Request, DEQ Form CERT-01 (rev. 8/2018)

Petition for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP-01 (rev. 8/2018)

VA.R. Doc. No. R19-5723; Filed October 12, 2018, 8:58 a.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation.**

Agency Contact: Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC25-740)

Application for an Emergency Authorization to Produce, Distribute or Reuse Reclaimed Water (12/2015).

Application for Reclaimed Water Hauling Operations, DEQ Form WR&R-2 (eff. 10/2018)

Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit (1/2014)

Water Reclamation and Reuse Variance Application (12/2015)

VA.R. Doc. No. R19-5676; Filed October 23, 2018, 1:04 p.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-5).**

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

Effective Dates: October 23, 2018, through April 22, 2020.

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

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Item 303 X of Chapter 2 of the 2018 Acts of the Assembly, Special Session I, directs the agency to make changes to the utilization review and provider qualifications for community mental health services in order to ensure appropriate utilization and cost efficiency.

The amendments provide clarification to providers of the documentation required to establish that services are rendered by individuals with appropriate qualifications and credentials and update the regulations to include Department of Health Professions requirements for registration of qualified mental health professionals.

12VAC30-60-5. Applicability of utilization review requirements.

A. These utilization requirements shall apply to all Medicaid covered services unless otherwise specified.

B. Some Medicaid covered services require an approved service authorization prior to service delivery in order for reimbursement to occur. ~~1.~~ To obtain service authorization, all providers' information supplied to the Department of Medical Assistance Services (DMAS), service authorization contractor, or the behavioral health service authorization contractor shall be fully substantiated throughout individuals' medical records.

~~2.~~ C. Providers shall be required to maintain documentation detailing all relevant information about the Medicaid individuals who are in providers' care. Such documentation shall fully disclose the extent of services provided in order to support providers' claims for reimbursement for services rendered. This documentation shall be written, signed, and dated at the time the services are rendered unless specified otherwise.

D. Providers shall maintain documentation that demonstrates that individuals providing services have the required qualifications established by DMAS, the Department of Health Professions (DHP), or the Department of Behavioral Health and Developmental Services (DBHDS).

~~C.~~ E. DMAS, or its designee, shall perform reviews of the utilization of all Medicaid covered services pursuant to 42 CFR 440.260 and 42 CFR Part 456.

~~D.~~ F. DMAS shall recover expenditures made for covered services when providers' documentation does not comport with standards specified in all applicable regulations.

~~E.~~ G. Providers who are determined not to be in compliance with DMAS requirements shall be subject to 12VAC30-80-130 for the repayment of those overpayments to DMAS.

~~F.~~ H. Utilization review requirements specific to community mental health services, as set out in 12VAC30-50-130 and 12VAC30-50-226, shall be as follows:

1. To apply to be reimbursed as a Medicaid provider, the required ~~Department of Behavioral Health and Developmental Services (DBHDS)~~ DHBDS license shall be either a full, annual, triennial, or conditional license. Providers must be enrolled with DMAS or the ~~BHSA~~ behavioral health services administrator to be reimbursed. Once a health care entity has been enrolled as a provider, it shall maintain, and update periodically as DMAS requires, a current Provider Enrollment Agreement for each Medicaid service that the provider offers.

2. Health care entities with provisional licenses issued by DBHDS shall not be reimbursed as Medicaid providers ~~of community mental health services~~.

3. Payments shall not be permitted to health care entities that either hold provisional licenses or fail to enter into a Medicaid Provider Enrollment Agreement for a service prior to rendering that service.

4. The behavioral health service authorization contractor shall apply a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual Criteria, or an equivalent standard authorized in advance by DMAS. Services that fail to meet medical necessity criteria shall be denied service authorization.

5. Service providers shall maintain documentation to establish that services are rendered by individuals with appropriate qualifications and credentials, including proof of licensure or registration through DHP if applicable. Qualified mental health professional-eligibles shall maintain documentation of supervision and of progress toward the requirements for DHP registration as a qualified mental health professional-child or progress toward the requirements for DHP registration as a qualified mental health professional-adult.

VA.R. Doc. No. R19-5371; Filed October 23, 2018, 2:45 p.m.

Final Regulation

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

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12VAC30-80-97).

12VAC30-120. Waivered Services (amending 12VAC30-120-380).

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

Effective Date: December 12, 2018.

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Summary:

The amendments establish Medicaid coverage for behavioral therapy services for children under the authority of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. EPSDT is a mandatory Medicaid-covered service that offers preventive, diagnostic, and treatment health care services to individuals from birth through the age 21 years. To be covered for this service, an individual must have a psychiatric diagnosis relevant to the need for behavioral therapy services, including autism, autism spectrum disorders, or other similar developmental delays and must meet the medical necessity criteria. The amendments define the behavioral therapy service requirements, medical necessity criteria, provider clinical assessment and intake procedures, service planning and progress measurement requirements, care coordination, clinical supervision, and other standards to assure quality. The behavioral therapy service will be reimbursed by the Department of Medical Assistance Services outside of the Medallion 3 managed care contracts.

The proposed amendments to 12VAC30-120-180 were not adopted in the final regulation; therefore, managed care organizations are allowed to provide services. Changes in that section related to documentation will be addressed in a separate regulatory action.

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.

12VAC30-50-130. Nursing facility services, EPSDT, including school health services and family planning.

A. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older. Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

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

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

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

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

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

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

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

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

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

"Behavioral health service" means the same as defined in 12VAC30-130-5160.

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

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

"Caregiver" means the same as defined in 12VAC30-130-5160.

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

"Clinical experience" means providing direct behavioral health services on a full-time basis or equivalent hours of part-time work to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 years of age (Level A), or (iv) therapeutic behavioral services (Level B). Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. The equivalency of part-time hours to full-time hours for the purpose of this requirement shall be as established by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

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

"Direct supervisor" means the person who provides direct supervision to the peer recovery specialist. The direct supervisor (i) shall have two consecutive years of documented practical experience rendering peer support services or family support services, have certification training as a PRS under a certifying body approved by DBHDS, and have documented completion of the DBHDS PRS supervisor training; (ii) shall be a qualified mental health professional (QMHP-A, QMHP-C, or QMHP-E) as defined in 12VAC35-105-20 with at least two consecutive years of documented experience as a QMHP, and who has documented completion of the DBHDS PRS supervisor training; or (iii) shall be an LMHP who has documented completion of the DBHDS PRS supervisor training who is acting within his scope of practice under state law. An LMHP providing services

before April 1, 2018, shall have until April 1, 2018, to complete the DBHDS PRS supervisor training.

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

"EPSDT" means early and periodic screening, diagnosis, and treatment.

"Family support partners" means the same as defined in 12VAC30-130-5170.

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

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

"Licensed mental health professional" or "LMHP" means the same as defined in 12VAC35-105-20.

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

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

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

"Peer recovery specialist" or "PRS" means the same as defined in 12VAC30-130-5160.

"Person centered" means the same as defined in 12VAC30-130-5160.

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

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

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

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

"Qualified mental health professional-eligible" or "QMHP-E" means the same as the term is defined in

12VAC35-105-20 and consistent with the requirements of 12VAC35-105-590.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-1370.

"Recovery-oriented services" means the same as defined in 12VAC30-130-5160.

"Recovery, resiliency, and wellness plan" means the same as defined in 12VAC30-130-5160.

"Resiliency" means the same as defined in 12VAC30-130-5160.

"Self-advocacy" means the same as defined in 12VAC30-130-5160.

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

"Services provided under arrangement" means the same as defined in 12VAC30-130-850.

"Strength-based" means the same as defined in 12VAC30-130-5160.

"Supervision" means the same as defined in 12VAC30-130-5160.

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

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

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

~~(3)~~ (2)] Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

[~~(4)~~ (3)] These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

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

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

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

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

d. Community-based services for children and adolescents [~~under~~ younger than] 21 years of age (Level A) pursuant to 42 CFR 440.031(d).

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

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

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

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

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

(6) These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Behavioral Health and Developmental Services under the Standards for Licensed Children's Residential Facilities (22VAC40-151), Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41), or Regulations for Children's Residential Facilities (12VAC35-46).

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

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

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

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

e. Therapeutic behavioral services (Level B) pursuant to 42 CFR 440.130(d).

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

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

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

(4) These residential providers must be licensed by the Department of Behavioral Health and Developmental

Services (DBHDS) under the Regulations for Children's Residential Facilities (12VAC35-46).

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

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

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

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

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

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

f. Mental health family support partners.

(1) Mental health family support partners are peer recovery support services and are nonclinical, peer-to-peer activities that engage, educate, and support the caregiver and an individual's self-help efforts to improve health recovery resiliency and wellness. Mental health family support partners is a peer support service and is a strength-based, individualized service provided to the caregiver of a Medicaid-eligible individual younger than 21 years of age with a mental health disorder that is the focus of support. The services provided to the caregiver and individual must be directed exclusively toward the benefit of the Medicaid-eligible individual. Services are expected to improve outcomes for individuals younger than 21 years of age with complex needs who are involved with multiple systems and increase the individual's and family's confidence and capacity to manage their own services and supports while promoting recovery and healthy relationships. These services are rendered by a PRS who is (i) a parent of a minor or adult child with a similar mental health disorder or (ii) an adult with personal experience with a family member with a similar mental health disorder with experience navigating behavioral health care services. The PRS shall perform the service within the scope of his knowledge, lived experience, and education.

(2) Under the clinical oversight of the LMHP making the recommendation for mental health family support partners, the peer recovery specialist in consultation with his direct supervisor shall develop a recovery, resiliency, and wellness plan based on the LMHP's recommendation for service, the individual's and the caregiver's perceived recovery needs, and any clinical assessments or service specific provider intakes as defined in this section within 30 calendar days of the initiation of service. Development of the recovery, resiliency, and wellness plan shall include collaboration with the individual and the individual's caregiver. Individualized goals and strategies shall be focused on the individual's identified needs for self-advocacy and recovery. The recovery, resiliency, and wellness plan shall also include documentation of how many days per week and how many hours per week are required to carry out the services in order to meet the goals of the plan. The recovery, resiliency, and wellness plan shall be completed, signed, and dated by the LMHP, the PRS, the direct supervisor, the individual, and the individual's caregiver within 30 calendar days of the initiation of service. The PRS shall act as an advocate for the individual, encouraging the individual and the caregiver to take a proactive role in developing and updating goals and objectives in the individualized recovery planning.

(3) Documentation of required activities shall be required as set forth in 12VAC30-130-5200 A and C through J.

(4) Limitations and exclusions to service delivery shall be the same as set forth in 12VAC30-130-5210.

(5) Caregivers of individuals younger than 21 years of age who qualify to receive mental health family support partners (i) care for an individual with a mental health disorder who requires recovery assistance and (ii) meet two or more of the following:

(a) Individual and his caregiver need peer-based recovery-oriented services for the maintenance of wellness and the acquisition of skills needed to support the individual.

(b) Individual and his caregiver need assistance to develop self-advocacy skills to assist the individual in achieving self-management of the individual's health status.

(c) Individual and his caregiver need assistance and support to prepare the individual for a successful work or school experience.

(d) Individual and his caregiver need assistance to help the individual and caregiver assume responsibility for recovery.

(6) Individuals 18 through 20 years of age who meet the medical necessity criteria in 12VAC30-50-226 B 7 e, who would benefit from receiving peer supports directly and who choose to receive mental health peer support services directly instead of through their caregiver, shall be permitted to receive mental health peer support services by an appropriate PRS.

(7) To qualify for continued mental health family support partners, the requirements for continued services set forth in 12VAC30-130-5180 D shall be met.

(8) Discharge criteria from mental health family support partners shall be the same as set forth in 12VAC30-130-5180 E.

(9) Mental health family support partners services shall be rendered on an individual basis or in a group.

(10) Prior to service initiation, a documented recommendation for mental health family support partners services shall be made by a licensed mental health professional (LMHP) who is acting within his scope of practice under state law. The recommendation shall verify that the individual meets the medical necessity criteria set forth in subdivision 5 [~~a (5)~~] of this subsection. The recommendation shall be valid for no longer than 30 calendar days.

(11) Effective July 1, 2017, a peer recovery specialist shall have the qualifications, education, experience, and certification required by DBHDS in order to be eligible to register with the Virginia Board of Counseling on or after July 1, 2018. Upon the promulgation of regulations by the Board of Counseling, registration of peer recovery specialists by the Board of Counseling shall be required. The PRS shall perform mental health family support partners services under the oversight of the LMHP making the recommendation for services and providing the clinical oversight of the recovery, resiliency, and wellness plan.

(12) The PRS shall be employed by or have a contractual relationship with the enrolled provider licensed for one of the following:

(a) Acute care general and emergency department hospital services licensed by the Department of Health.

(b) Freestanding psychiatric hospital and inpatient psychiatric unit licensed by the Department of Behavioral Health and Developmental Services.

(c) Psychiatric residential treatment facility licensed by the Department of Behavioral Health and Developmental Services.

(d) Therapeutic group home licensed by the Department of Behavioral Health and Developmental Services.

(e) Outpatient mental health clinic services licensed by the Department of Behavioral Health and Developmental Services.

(f) Outpatient psychiatric services provider.

(g) A community mental health and rehabilitative services provider licensed by the Department of Behavioral Health and Developmental Services as a provider of one of the following community mental health and rehabilitative services as defined in this section, 12VAC30-50-226, 12VAC30-50-420, or 12VAC30-50-430 for which the individual younger than 21 years meets medical necessity criteria (i) intensive in home; (ii) therapeutic day treatment; (iii) day treatment or partial hospitalization; (iv) crisis intervention; (v) crisis stabilization; (vi) mental health skill building; or (vii) mental health case management.

(13) Only the licensed and enrolled provider as referenced in subdivision 5 f (12) of this subsection shall be eligible to bill and receive reimbursement from DMAS or its contractor for mental health family support partner services. Payments shall not be permitted to providers that fail to enter into an enrollment agreement with DMAS or its contractor. Reimbursement shall be subject to retraction for any billed service that is determined not to be in compliance with DMAS requirements.

(14) Supervision of the PRS shall be required as set forth in 12VAC30-130-5190 E and 12VAC30-130-5200 G.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays in inpatient psychiatric facilities described in 42 CFR 440.160(b)(1) and (b)(2) for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by (i) a psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or (ii) a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Commission on Accreditation of Rehabilitation Facilities. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements

of Part XIV (12VAC30-130-850 et seq.) of Amount, Duration and Scope of Selected Services.

a. The inpatient psychiatric services benefit for individuals younger than 21 years of age shall include services defined at 42 CFR 440.160 that are provided under the direction of a physician pursuant to a certification of medical necessity and plan of care developed by an interdisciplinary team of professionals and shall involve active treatment designed to achieve the child's discharge from inpatient status at the earliest possible time. The inpatient psychiatric services benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the inpatient psychiatric facility, as long as the inpatient psychiatric facility (i) arranges for and oversees the provision of all services, (ii) maintains all medical records of care furnished to the individual, and (iii) ensures that the services are furnished under the direction of a physician. Services provided under arrangement shall be documented by a written referral from the inpatient psychiatric facility. For purposes of pharmacy services, a prescription ordered by an employee or contractor of the facility who is licensed to prescribe drugs shall be considered the referral.

b. Eligible services provided under arrangement with the inpatient psychiatric facility shall vary by provider type as described in this subsection. For purposes of this section, emergency services means the same as is set out in 12VAC30-50-310 B.

(1) State freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) pharmacy services and (ii) emergency services.

(2) Private freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) outpatient hospital services; (iii) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (iv) laboratory and radiology services; (v) vision services; (vi) dental, oral surgery, and orthodontic services; (vii) transportation services; and (viii) emergency services.

(3) Residential treatment facilities, as defined at 42 CFR 483.352, shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services, including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) pharmacy services; (iii) outpatient hospital services; (iv) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (v) laboratory and radiology services; (vi) durable medical equipment; (vii) vision services; (viii) dental, oral surgery, and orthodontic services; (ix) transportation services; and (x) emergency services.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with (i) 42 CFR Part 441 Subpart D, specifically 42 CFR 441.151(a) and (b) and [42 CFR] 441.152 through [42 CFR] 441.156, and (ii) the conditions of participation in 42 CFR Part 483 Subpart G. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

d. Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT.

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

8. Addiction and recovery treatment services shall be covered under EPSDT consistent with 12VAC30-130-5000 et seq.

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

10. Behavioral therapy services shall be covered for individuals [~~under the age of~~ younger than] 21 years [of age].

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

"Behavioral therapy" means systematic interventions provided by licensed practitioners acting within the scope of practice defined under a Virginia [Department of] Health Professions [~~Regulatory Board~~ regulatory board] and covered as remedial care under 42 CFR 440.130(d) [~~within the home~~] to individuals [~~under~~ younger than] 21 years of age. Behavioral therapy includes applied behavioral analysis [~~and is primarily provided in the family home~~]. Family [~~counseling and~~] training related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. Behavioral therapy services shall be subject to clinical reviews and determined as medically necessary. Behavioral therapy may be [~~intermittently~~] provided in [the individual's home and] community settings [~~when~~

~~approved settings are~~ as] deemed by DMAS or its contractor as medically necessary treatment.

["Counseling" means a professional mental health service that can only be provided by a person holding a license issued by a health regulatory board at the Department of Health Professions, which includes conducting assessments, making diagnoses of mental disorders and conditions, establishing treatment plans, and determining treatment interventions.]

"Individual" means the child or adolescent [~~under the age of~~ younger than] 21 [years of age] who is receiving behavioral therapy services.

"Primary care provider" means a licensed medical practitioner who provides preventive and primary health care and is responsible for providing routine EPSDT screening and referral and coordination of other medical services needed by the individual.

b. Behavioral therapy services shall be designed to enhance communication skills and decrease maladaptive patterns of behavior, which if left untreated, could lead to more complex problems and the need for a greater or a more intensive level of care. The service goal shall be to ensure the individual's family or caregiver is trained to effectively manage the individual's behavior in the home using modification strategies. [~~The~~ All] services shall be provided in accordance with the [~~individual service plan~~ ISP] and clinical assessment summary.

c. Behavioral therapy services shall be covered when recommended by the individual's primary care provider or other licensed physician, licensed physician assistant, or licensed nurse practitioner and determined by DMAS or its contractor to be medically necessary to correct or ameliorate significant impairments in major life activities that have resulted from either developmental, behavioral, or mental disabilities. Criteria for medical necessity are set out in 12VAC30-60-61 H. Service-specific provider intakes shall be required at the onset of these services in order to receive authorization for reimbursement. Individual service plans (ISPs) shall be required throughout the entire duration of services. The services shall be provided in accordance with the individual service plan and clinical assessment summary. These services shall be provided in settings that are natural or normal for a child or adolescent without a disability, such as [~~his~~ the individual's] home, unless there is justification in the ISP, which has been authorized for reimbursement, to include service settings that promote a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the [~~patient's residence~~ individual's home] and the larger community within which the individual resides. Covered behavioral therapy services shall include:

(1) Initial and periodic service-specific provider intake as defined in 12VAC30-60-61 H;

(2) Development of initial and updated ISPs as established in 12VAC30-60-61 H;

(3) Clinical supervision activities. Requirements for clinical supervision are set out in 12VAC30-60-61 H;

(4) Behavioral training to increase the individual's adaptive functioning and communication skills;

(5) Training a family member in behavioral modification methods [as established in 12VAC30-60-61 H];

(6) Documentation and analysis of quantifiable behavioral data related to the treatment objectives; and

(7) Care coordination.

C. School health services.

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

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

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

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

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

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

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed

under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

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

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

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

4. Covered services include:

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

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

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include [~~, but not necessarily be limited to~~] dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

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

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

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

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

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D (12VAC30-50-530). Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

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

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

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

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

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility or services to promote fertility. Family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage, or make direct referrals for abortions.

3. Family planning services as established by § 1905(a)(4)(C) of the Social Security Act include annual family planning exams; cervical cancer screening for women; sexually transmitted infection (STI) testing; lab services for family planning and STI testing; family planning education, counseling, and preconception health; sterilization procedures; nonemergency transportation to a family planning service; and U.S. Food and Drug Administration approved prescription and over-the-counter contraceptives, subject to limits in 12VAC30-50-210.

12VAC30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health [and behavioral therapy] services for children [~~; behavioral therapy services for children~~].

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

"At risk" means one or more of the following: (i) within the two weeks before the intake, the individual shall be screened by an LMHP for escalating behaviors that have put either the individual or others at immediate risk of physical injury; (ii) the parent/guardian is unable to manage the individual's mental, behavioral, or emotional problems in the home and is actively, within the past two to four weeks, seeking an out-of-home placement; (iii) a representative of either a juvenile justice agency, a department of social services (either the state agency or local agency), a community services board/behavioral health authority, the Department of Education, or an LMHP, as defined in 12VAC35-105-20, and who is neither an employee of nor consultant to the intensive in-home (IIH) services or therapeutic day treatment (TDT) provider, has recommended an out-of-home placement absent an immediate change of behaviors and when unsuccessful mental health services are evident; (iv) the individual has a history of unsuccessful services (either crisis intervention, crisis stabilization, outpatient psychotherapy, outpatient substance abuse services, or mental health support) within the past 30 days; (v) the treatment team or family assessment planning team (FAPT) recommends IIH services or TDT for an individual currently who is either: (a) transitioning out of residential treatment facility Level C services, (b) transitioning out of a group home Level A or B services, (c) transitioning out of acute psychiatric hospitalization, or (d) transitioning between foster homes, mental health case management, crisis intervention, crisis stabilization, outpatient psychotherapy, or outpatient substance abuse services.

"Failed services" or "unsuccessful services" means, as measured by ongoing behavioral, mental, or physical distress, that the [~~service or~~] services did not treat or resolve the individual's mental health or behavioral issues.

"Individual" means the Medicaid-eligible person receiving these services and for the purpose of this section includes children from birth up to 12 years of age or adolescents ages 12 through 20 years.

"Licensed assistant behavior analyst" means a person who has met the licensing requirements of 18VAC85-150 and holds a valid license issued by the Department of Health Professions.

"Licensed behavior analyst" means a person who has met the licensing requirements of 18VAC85-150 and holds a valid license issued by the Department of Health Professions.

"New service" means a community mental health rehabilitation service for which the individual does not have a current service authorization in effect as of July 17, 2011.

"Out-of-home placement" means placement in one or more of the following: (i) either a Level A or Level B group home; (ii) regular foster home if the individual is currently residing with his biological family and, due to his behavior problems, is at risk of being placed in the custody of the local department of social services; (iii) treatment foster care if the individual is currently residing with his biological family or a regular foster care family and, due to the individual's behavioral problems, is at risk of removal to a higher level of care; (iv) Level C residential facility; (v) emergency shelter for the individual only due either to his mental health or behavior or both; (vi) psychiatric hospitalization; or (vii) juvenile justice system or incarceration.

"Service-specific provider intake" means the evaluation that is conducted according to the Department of Medical Assistance Services (DMAS) intake definition set out in 12VAC30-50-130.

B. Utilization review requirements for all services in this section.

1. The services described in this section shall be rendered consistent with the definitions, service limits, and requirements described in this section and in 12VAC30-50-130.

2. Providers shall be required to refund payments made by Medicaid if they fail to maintain adequate documentation to support billed activities.

3. Individual service plans (ISPs) shall meet all of the requirements set forth in 12VAC30-60-143 B 7.

C. ~~Intensive~~ Utilization review of intensive in-home (IIH) services for children and adolescents.

1. The service definition for intensive in-home (IIH) services is contained in 12VAC30-50-130.

2. Individuals qualifying for this service shall demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness [~~which~~ that] results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis to be authorized for these services:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

3. Prior to admission, an appropriate service-specific provider intake, as defined in 12VAC30-50-130, shall be conducted by the licensed mental health professional (LMHP), LMHP-supervisee, LMHP-resident, or LMHP-RP, documenting the individual's diagnosis and describing how service needs can best be met through intervention provided typically but not solely in the individual's residence. The service-specific provider intake shall describe how the individual's clinical needs put the individual at risk of out-of-home placement and shall be conducted face-to-face in the individual's residence. Claims for services that are based upon service-specific provider intakes that are incomplete, outdated (more than 12 months old), or missing shall not be reimbursed.

4. An individual service plan (ISP) shall be fully completed, signed, and dated by either an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E and the individual and individual's parent/guardian within 30 days of initiation of services. The ISP shall meet all of the requirements as defined in 12VAC30-50-226.

5. DMAS shall not reimburse for dates of services in which the progress notes are not individualized and child-specific. Duplicated progress notes shall not constitute the required child-specific individualized progress notes. Each progress note shall demonstrate unique differences particular to the individual's circumstances, treatment, and progress. Claim payments shall be retracted for services that are supported by documentation that does not demonstrate unique differences particular to the individual.

6. Services shall be directed toward the treatment of the eligible individual and delivered primarily in the family's residence with the individual present. As clinically indicated, the services may be rendered in the community if there is documentation, on that date of service, of the necessity of providing services in the community. The documentation shall describe how the alternative community service location supports the identified clinical needs of the individual and describe how it facilitates the implementation of the ISP. For services provided outside of the home, there shall be documentation reflecting therapeutic treatment as set forth in the ISP provided for that date of service in the appropriately signed and dated progress notes.

7. These services shall be provided when the clinical needs of the individual put him at risk for out-of-home placement, as these terms are defined in this section:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the individual in the family situation, or

b. When the individual's residence as the setting for services is more likely to be successful than a clinic.

The service-specific provider intake shall describe how the individual meets either subdivision a or b of this subdivision [7].

8. Services shall not be provided if the individual is no longer a resident of the home.

9. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The individual and responsible parent/guardian shall be available and in agreement to participate in the transition.

10. At least one parent/legal guardian or responsible adult with whom the individual is living must be willing to

participate in the intensive in-home services with the goal of keeping the individual with the family. In the instance of this service, a responsible adult shall be an adult who lives in the same household with the child and is responsible for engaging in therapy and service-related activities to benefit the individual.

11. The enrolled ~~service~~ provider shall be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) as a provider of intensive in-home services. The provider shall also have a provider enrollment agreement with DMAS or its contractor in effect prior to the delivery of this service that indicates that the provider will offer intensive in-home services.

12. Services must only be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-C, or QMHP-E. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in 12VAC35-105-20.

13. The billing unit for intensive in-home service shall be one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is an ISP in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per individual/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the individual and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans shall incorporate an individualized discharge plan that describes transition from intensive in-home to less intensive or nonhome based services.

14. The ISP, as defined in 12VAC30-50-226, shall be updated as the individual's needs and progress changes and signed by either the parent or legal guardian and the individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP. If there is a lapse in services that is greater than 31 consecutive calendar days without any communications from family members/legal guardian or the individual with the ~~service~~ provider, the provider shall discharge the individual. If the individual continues to need services, then a new intake/admission shall be documented and a new service authorization shall be required.

15. The provider shall ensure that the maximum staff-to-caseload ratio fully meets the needs of the individual.

16. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the ~~service~~ provider shall contact the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers who are using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of the information in the electronic health records.

17. Emergency assistance shall be available 24 hours per day, seven days a week.

18. Providers shall comply with DMAS marketing requirements at 12VAC30-130-2000. Providers that DMAS determines violate these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

19. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or guardian, shall inform him of the individual's receipt of IIH services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

D. ~~Therapeutic~~ Utilization review of therapeutic day treatment for children and adolescents.

1. The service definition for therapeutic day treatment (TDT) for children and adolescents is contained in 12VAC30-50-130.

2. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they

cannot function in these programs without additional services.

3. The service-specific provider intake shall document the individual's behavior and describe how the individual meets these specific service criteria in subdivision 2 of this subsection.

4. Prior to admission to this service, a service-specific provider intake shall be conducted by the LMHP as defined in 12VAC35-105-20.

5. An ISP shall be fully completed, signed, and dated by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or QMHP-E and by the individual or the parent/guardian within 30 days of initiation of services and shall meet all requirements of an ISP as defined in 12VAC30-50-226. Individual progress notes shall be required for each contact with the individual and shall meet all of the requirements as defined in 12VAC30-50-130.

6. Such services shall not duplicate those services provided by the school.

7. Individuals qualifying for this service shall demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness [~~which~~ that] results in significant functional impairments in major life activities. Individuals shall meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services, or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

8. The enrolled provider of therapeutic day treatment for child and adolescent services shall be licensed by DBHDS to provide day support services. The provider shall also have a provider enrollment agreement in effect with DMAS prior to the delivery of this service that indicates that the provider offers therapeutic day treatment services for children and adolescents.

9. Services shall be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-C or QMHP-E.

10. The minimum staff-to-individual ratio as defined by DBHDS licensing requirements shall ensure that adequate staff is available to meet the needs of the individual identified on the ISP.

11. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service shall be defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

12. Time required for academic instruction when no treatment activity is going on shall not be included in the billing unit.

13. Services shall be provided following a service-specific provider intake that is conducted by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP. An LMHP, LMHP-supervisee, or LMHP-resident shall make and document the diagnosis. The service-specific provider intake shall include the elements as defined in 12VAC30-50-130.

14. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

15. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or parent/legal guardian, shall inform [~~him~~ the primary care provider] of the child's receipt of community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted. The parent/legal guardian shall be required to give written consent that this provider has permission to inform the primary care provider of the child's or adolescent's receipt of community mental health rehabilitative services.

16. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000. Providers that DMAS determines have violated these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

17. If there is a lapse in services greater than 31 consecutive calendar days, the provider shall discharge the individual. If the individual continues to need services, a new intake/admission documentation shall be prepared and a new service authorization shall be required.

E. ~~Community-based~~ Utilization review of community-based services for children and adolescents [~~under~~ younger than] 21 years of age (Level A).

1. The staff ratio must be at least [~~1~~ one] to [~~6~~ six] during the day and at least [~~1~~ one] to 10 between 11 p.m. and 7 a.m. The program director supervising the program/group home must be, at minimum, a QMHP-C or QMHP-E (as defined in 12VAC35-105-20). The program director must be employed full time.

2. In order for Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff at the group home must meet DBHDS paraprofessional staff criteria, defined in 12VAC35-105-20.

3. Authorization is required for Medicaid reimbursement. All community-based services for children and adolescents [~~under~~ younger than] 21 (Level A) require authorization prior to reimbursement for these services. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an individual service plan (ISP), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

5. Prior to admission, a service-specific provider intake shall be conducted according to DMAS specifications described in 12VAC30-50-130.

6. Such service-specific provider intakes shall be performed by an LMHP, an LMHP-supervisee, LMHP-resident, or LMHP-RP.

7. If an individual receiving community-based services for children and adolescents [~~under~~ younger than] 21 [years of age] (Level A) is also receiving case management services, the provider shall collaborate with the case manager by notifying the case manager of the provision of Level A services and shall send monthly updates on the individual's progress. When the individual is discharged from Level A services, a discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers who are using the same electronic health record for the individual shall meet requirements for the delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

F. ~~Therapeutic~~ Utilization review of therapeutic behavioral services for children and adolescents [~~under~~ younger than] 21 years of age (Level B).

1. The staff ratio must be at least [~~1~~ one] to [~~4~~ four] during the day and at least [~~1~~ one] to [~~8~~ eight] between 11 p.m. and 7 a.m. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 individuals including all sites for which the same clinical director is responsible.

2. The program director must be full time and be a QMHP-C or QMHP-E with a bachelor's degree and at least one year's clinical experience.

3. For Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff at the group home shall meet DBHDS paraprofessional staff criteria, as defined in 12VAC35-105-20. The program/group home must coordinate services with other providers.

4. All therapeutic behavioral services (Level B) shall be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

5. Services must be provided in accordance with an ISP, which shall be fully completed within 30 days of authorization for Medicaid reimbursement.

6. Prior to admission, a service-specific provider intake shall be performed using all elements specified by DMAS in 12VAC30-50-130.

7. Such service-specific provider intakes shall be performed by an LMHP, an LMHP-supervisee, LMHP-resident, or LMHP-RP.

8. If an individual receiving therapeutic behavioral services for children and adolescents [~~under~~ younger than] 21 [years of age] (Level B) is also receiving case management services, the therapeutic behavioral services provider must collaborate with the care coordinator/case manager by notifying him of the provision of Level B services and the Level B services provider shall send monthly updates on the individual's treatment status. When the individual is discharged from Level B services, a discharge summary shall be sent to the care coordinator/case manager within 30 days of the discontinuation date.

9. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or parent/legal guardian, shall inform [~~him~~ the primary care provider] of the individual's receipt of these Level B services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted. If these individuals are children or adolescents, then the parent/legal guardian shall be required to give written consent that this provider has permission to inform the primary care provider of the individual's receipt of community mental health rehabilitative services.

G. Utilization review. Utilization reviews for community-based services for children and adolescents [~~under~~ younger than] 21 years of age (Level A) and therapeutic behavioral services for children and adolescents [~~under~~ younger than]

21 years of age (Level B) shall include determinations whether providers meet all DMAS requirements, including compliance with DMAS marketing requirements. Providers that DMAS determines have violated the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

H. Utilization review of behavioral therapy services for children.

1. In order for Medicaid to cover behavioral therapy services, the provider shall be enrolled with DMAS or its contractor as a Medicaid provider. The provider enrollment agreement shall be in effect prior to the delivery of services for Medicaid reimbursement.

2. Behavioral therapy services shall be covered for individuals younger than 21 years of age when recommended by the individual's primary care provider, licensed physician, licensed physician assistant, or licensed nurse practitioner and determined by DMAS or its contractor to be medically necessary to correct or ameliorate significant impairments in major life activities that have resulted from either developmental, behavioral, or mental disabilities.

3. Behavioral therapy services require service authorization. Services shall be authorized only when eligibility and medical necessity criteria are met.

4. Prior to treatment, an appropriate service-specific provider intake shall be conducted, documented, signed, and dated by a licensed behavior analyst (LBA), licensed assistant behavior analyst (LABA), [~~or~~] LMHP, LMHP-R, LMHP-RP, or LMHP-S, acting within the scope of his practice, documenting the individual's diagnosis (including a description of the [~~behavior or~~] behaviors targeted for treatment with their frequency, duration, and intensity) and describing how service needs can best be met through behavioral therapy. The service-specific provider intake shall be conducted face-to-face in the individual's residence with the individual and parent or guardian. [~~A new service-specific provider intake shall be conducted and documented every three months, or more often if needed, annually to observe the individual and family interaction, review clinical data, and revise the ISP as needed.~~]

5. The ISP shall be developed upon admission to the service and reviewed within 30 days of admission to the service to ensure that all treatment goals are reflective of the individual's clinical needs and shall describe each treatment goal, targeted behavior, one or more measurable objectives for each targeted behavior, the behavioral modification strategy to be used to manage each targeted behavior, the plan for parent or caregiver training, care coordination, and the measurement and data collection methods to be used for each targeted behavior in the ISP. The ISP [as defined in 12VAC30-50-130] shall be fully completed, signed, and dated by an LBA, LABA, LMHP, LMHP-R, LMHP-RP, or LMHP-S [~~and the individual and individual's parent or guardian. The ISP shall be reviewed every three months (at the same time the service-specific provider intake is conducted and documented) and updated as the individual progresses and his needs change, but at least annually, and shall be signed by either the parent or legal guardian and the individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP~~]. [Every three months, the LBA, LABA, LMHP, LMHP-R, LMHP-RP, or LMHP-S shall review the ISP, modify the ISP as appropriate, and update the ISP, and all of these activities shall occur with the individual in a manner in which the individual may participate in the process. The ISP shall be rewritten at least annually.]

6. Reimbursement for the initial service-specific provider intake and the initial ISP shall be limited to five hours without service authorization. If additional time is needed to complete these documents, service authorization shall be required.

7. Clinical supervision shall be required for Medicaid reimbursement of behavioral therapy services that are rendered by an LABA, LMHP-R, LMHP-RP, or LMHP-S or unlicensed staff consistent with the scope of practice as described by the applicable Virginia Department of Health Professions regulatory board. Clinical supervision [of unlicensed staff] shall occur at least weekly [~~and, as~~. As] documented in the individual's medical record, [clinical supervision] shall include a review of progress notes and data and dialogue with supervised staff about the individual's progress and the effectiveness of the ISP. [Clinical supervision shall be documented by, at a minimum, the contemporaneously dated signature of the clinical supervisor.]

8. [Family training involving the individual's family and significant others to advance the treatment goals of the individual shall be provided when (i) the training with the family member or significant other is for the direct benefit of the individual, (ii) the training is not aimed at addressing the treatment needs of the individual's family or significant others, (iii) the individual is present except when it is clinically appropriate for the individual to be absent in order to advance the individual's treatment goals, and (iv) the training is aligned with the goals of the individual's treatment plan.

9.] The following shall not be covered under this service:

a. Screening to identify physical, mental, or developmental conditions that may require evaluation or treatment. Screening is covered as an EPSDT service provided by the primary care provider and is not covered as a behavioral therapy service under this section.

b. Services other than the initial service-specific provider intake that are provided but are not based upon the individual's ISP or linked to a service in the ISP. Time not actively involved in providing services directed by the ISP shall not be reimbursed.

c. Services that are based upon an incomplete, missing, or outdated service-specific provider intake or ISP.

d. Sessions that are conducted for family support, education, recreational, or custodial purposes, including respite or child care.

e. Services that are provided by a provider but are rendered primarily by a relative or guardian who is legally responsible for the individual's care.

f. Services that are provided in a clinic or provider's office without documented justification for the location in the ISP.

g. Services that are provided in the absence of the individual [~~and~~ or] a parent or other authorized caregiver identified in the ISP with the exception of treatment review processes described in [~~12VAC30-60-61-H-11~~ subdivision 12] e [of this subsection], care coordination, and clinical supervision.

h. Services provided by a local education agency.

i. Provider travel time.

[~~9.~~ 10.] Behavioral therapy services shall not be reimbursed concurrently with community mental health services described in 12VAC30-50-130 B 5 or 12VAC30-50-226, or behavioral, psychological, or psychiatric therapeutic consultation described in 12VAC30-120-756, 12VAC30-120-1000, or 12VAC30-135-320.

[~~10.~~ 11.] If the individual is receiving targeted case management services under the Medicaid state plan (defined in 12VAC30-50-410 through 12VAC30-50-491, the provider shall notify the case manager of the provision of behavioral therapy services unless the parent or guardian requests that the information not be released. In addition, the provider shall send monthly updates to the case manager on the individual's status pursuant to a valid release of information. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. A refusal of the parent or guardian to release information shall be documented in the medical record for the date the request was discussed.

[~~11.~~ 12.] Other standards to ensure quality of services:

a. Services shall be delivered only by an LBA, LABA, LMHP, LMHP-R, LMHP-RP, LMHP-S, or clinically supervised unlicensed staff consistent with the scope of practice as described by the applicable Virginia Department of Health Professions regulatory board.

b. Individual-specific services shall be directed toward the treatment of the eligible individual and delivered in the family's residence unless an alternative location is justified and documented in the ISP.

c. Individual-specific progress notes shall be created contemporaneously with the service activities and shall document the name and Medicaid number of each individual; the provider's name, signature, and date; and time of service. Documentation shall include activities provided, length of services provided, the individual's reaction to that day's activity, and documentation of the individual's and the parent or caregiver's progress toward achieving each behavioral objective through analysis and reporting of quantifiable behavioral data. Documentation shall be prepared to clearly demonstrate efficacy using baseline and service-related data that shows clinical progress and generalization for the child and family members toward the therapy goals as defined in the service plan.

d. Documentation of all billed services shall include the amount of time or billable units spent to deliver the service and shall be signed and dated on the date of the service by the practitioner rendering the service.

e. Billable time is permitted for the LBA, LABA, LMHP, LMHP-R, LMHP-RP, or LMHP-S to better define behaviors and develop documentation strategies to measure treatment performance and the efficacy of the ISP objectives, provided that these activities are documented in a progress note as described in subdivision [~~11~~ 12] c of this subsection.

[~~12.~~ 13.] Failure to comply with any of the requirements in 12VAC30-50-130 or in this section shall result in retraction.

12VAC30-80-97. Fee-for-service: behavioral therapy services under EPSDT.

A. Payment for behavioral therapy services for individuals younger than 21 years of age shall be the lower of the state agency fee schedule or actual charge (charge to the general public). All private and governmental fee-for-service providers shall be reimbursed according to the same methodology. The agency's rates were set as of October 1, 2011, and are effective for services on or after that date until rates are revised. Rates are published on the agency's website at http://www.dmas.virginia.gov/.

B. Providers shall be required to refund payments made by Medicaid if they fail to maintain adequate documentation to support billed activities.

12VAC30-120-380. MCO responsibilities.

EDITOR'S NOTE: The proposed amendments to 12VAC30-120-380 were not adopted in the final regulations; therefore, no changes are made this section.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the hospital emergency departments.

2. Services that shall be provided outside the MCO network shall include [, but are not limited to,] those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include [~~(i)~~] dental and orthodontic services for children up to age 21 [~~years~~]; [~~(ii)~~] for all others, dental services (as described in 12VAC30-50-190); [~~(iii)~~] school health services; [~~(iv)~~] community mental health services (12VAC30-50-130 and 12VAC30-50-226); [~~(v)~~] early intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (as defined in 12VAC30-50-131 [and 12VAC30-50-415); and ~~); (vi)~~] long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services [~~; and (vii) behavioral therapy services as defined in 12VAC30-50-130~~].

3. The MCOs shall pay for emergency services and family planning services and supplies whether such services are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO and defined by the contract between DMAS and the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for members, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding member rights and shall comply with any applicable federal and state laws that pertain to member rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to members in accordance with 42 CFR 438.100.

[~~3. Providers shall be required to refund payments if they fail to maintain adequate documentation to support billed activities.~~]

E. The MCO shall ensure that the health care provided to its members meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the Commonwealth and the MCO. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs shall meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the Commonwealth and the MCO.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on members except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of a member who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R13-3527; Filed October 23, 2018, 10:33 a.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC35-190. Regulations for Voluntary Admissions to State Training Centers (amending 12VAC35-190-10, 12VAC35-190-21, 12VAC35-190-30).**

Statutory Authority: §§ 37.2-203 and 37.2-806 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 12, 2018.

Effective Date: December 27, 2018.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, TTY (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt 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 and the department.

Purpose: This action is the result of a periodic review. No comments were received during the review. With only two exceptions the amendments are not substantive and merely update language to mirror language in the Code of Virginia or in 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. The two substantive changes are (i) the addition of the definition of "regional support team" (RST) and the function of the RST to the discharge planning process, which is initiated at admission, and (ii) the addition of the assistant commissioner having responsibility for the training center as part of the admission process. These two changes mirror practices that have been in place since 2012.

Rationale for Using Fast-Track Rulemaking Process: This action is the result of a periodic review. No comments were received during the review. The amendments merely update language to mirror current language in state law, regulation, or practices that have been in place since 2012.

Substance: The amendments (i) update definitions of authorized representative, community services board, and training center; (ii) add definitions of department, intellectual disability, individual, and regional support team; (iii) add "in consultation with" in two sections to include RSTs in the process described in 12VAC35-190-21 regarding applications for admission and the assistant commissioner having responsibility for the training center in 12VAC35-190-30 regarding the criteria for admission; and (iv) delete the definition for "mental retardation" and the term throughout the regulation.

Issues: This action is the result of a periodic review, which includes a public comment period. The proposed amendments will provide clarity for interested stakeholders and the system by providing updated language to mirror language in the Code of Virginia, 12VAC35-115, and current practice.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,[1] the State Board of Behavioral Health and Developmental Services (Board) proposes to: 1) add a definition for "regional support team" (RST),[2] 2) specify that community services boards (CSB) must consult with the RST prior to preparing a preadmission screening to a state training center,[3] 3) specify that the director of the training center consult with the assistant commissioner responsible for the training center in determining whether admission is appropriate, and 4) update language to mirror language in § 37.2-100 of the Code of Virginia[4] or in 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.[5]

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

Estimated Economic Impact:

Background. The Regulations for Voluntary Admissions to State Training Centers are designed to: 1) inform individuals, authorized representatives, Department of Behavioral Health and Developmental Services (DBHDS) employees, community services board staff, and pertinent stakeholders of the process and procedures related to admitting individuals with intellectual disabilities to state training centers, 2) educate responsible persons on the approved criteria for admission to training centers, and 3) inform individuals and authorized representatives of the appeal process if they should disagree with the admission decision.

In 2012, the federal government and Virginia entered into a settlement agreement[6] concerning how the Commonwealth provides services to its intellectually and developmentally disabled population. As a result of that settlement agreement, RSTs were then created, and CSBs were required to consult

with the RST prior to preparing a preadmission screening to a state training center. Additionally, the director of training centers have been required to consult with the assistant commissioner responsible for the training center in determining whether admission is appropriate.

Analysis. The proposal to update language to mirror the Code of Virginia and 12VAC35-115 provides improved clarity and does not affect requirements in practice. The existence of and requirement for consultation with RSTs, and the requirement for consultation with the assistant commissioner, have been legally required through the settlement agreement since 2012. Thus, the only impact of the proposed language amendments would be to better inform the public of current legal requirements and procedures. Consequently, the benefits of the proposed amendments exceed the costs.

Businesses and Entities Affected. The proposed amendments affect the 40 Virginia CSBs, 3 training centers operated by DBHDS, and 5 RSTs.[7]

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

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

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

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

Small Businesses:

Definition

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

[1]See http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1601

[2]Regional support team is defined as "a group of professionals with expertise in serving individuals with developmental disabilities in the community appointed by the commissioner or his designee who provide recommendations to support placement in the most integrated setting appropriate to an individual's needs and consistent with the individual's informed choice."

[3]Training center is defined as "a facility operated by (DBHDS) that provides training, habilitation, or other individually focused supports to persons with intellectual disability."

[4]See https://law.lis.virginia.gov/vacode/title37.2/chapter1/section37.2-100/

[5]See https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/

[6]See https://www.justice.gov/sites/default/files/crt/legacy/2012/09/05/va_orderapprovingdecree_8-23-12.pdf

[7]Data Source: Department of Behavioral Health and Developmental Services

Agency's Response to Economic Impact Analysis: The Department of Behavioral Health and Developmental Services concurs with the economic impact analysis.

Summary:

The amendments (i) specify that community services boards must consult with the regional support team regarding admissions, (ii) specify that the director of the training center consult with the assistant commissioner responsible for the training center in determining eligibility for admission, and (iii) update language.

12VAC35-190-10. Definitions.

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

"Admission" means acceptance of an individual in a training center.

"Authorized representative" or "AR" means a person permitted by law or regulation to authorize the disclosure of information or to consent to treatment and services~~, including medical treatment,~~ or ~~the~~ participation in human research ~~on behalf of an individual who lacks the mental capacity to make these decisions~~.

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

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of ~~these regulations~~ this chapter, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

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

"Discharge plan" means a written plan prepared by the CSB providing case management in consultation with the training center pursuant to §§ 37.2-505 and 37.2-837 of the Code of Virginia. This plan is prepared when the individual is admitted to the training center and documents the services to be provided upon discharge.

"Guardian" means:

1. For ~~Minors~~ minors -- an adult who is either appointed by the court as a legal guardian of a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law.

2. For ~~Adults~~ adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § ~~37.2-1000~~ 64.2-2000 of the Code of Virginia.

"Individual" means a person with an intellectual disability for whom services are sought. This term includes the terms "consumer," "patient," "resident," and "client."

"Intellectual disability" means a disability originating before the age of 18 years, 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.

"Licensed professional" means a licensed psychologist, licensed professional counselor, or other individual who holds a valid professional license and has appropriate training in intellectual testing.

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

"Regional support team" or "RST" means a group of professionals with expertise in serving individuals with developmental disabilities in the community appointed by the commissioner or the commissioner's designee who provide recommendations to support placement in the most integrated setting appropriate to an individual's needs and consistent with the individual's informed choice.

"Training center" means a facility operated by the ~~Department of Behavioral Health and Developmental Services for the treatment,~~ department that provides training, ~~or~~ habilitation ~~of~~, or other individually focused supports to persons with ~~mental retardation (intellectual disability)~~ intellectual disabilities.

12VAC35-190-21. Application for admission.

A. Requests for admission to a training center shall be processed through the CSB. A parent, guardian, or authorized representative seeking admission to a training center for an individual with ~~mental retardation (intellectual disability)~~ an intellectual disability shall apply first to the CSB that serves the area where the individual, or if a minor, ~~his~~ the minor's parent or guardian is currently residing. The CSB shall consult with the RST prior to preparing a preadmission screening.

B. If the CSB, in consultation with the RST, determines that the services for the individual are not available in the community or the individual chooses to obtain services in the state training center, the CSB shall forward a preadmission screening report, pursuant to § 37.2-806 B of the Code of Virginia, to ~~the~~ a training center serving individuals with ~~mental retardation (intellectual disability) from that geographic section of the state in which the individual or, if a minor, his parent or guardian is currently residing~~ intellectual disabilities.

C. The preadmission screening report shall include at a minimum:

1. An application for services;

2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;

3. A social history and current housing or living arrangements; and

4. A psychological evaluation that reflects the individual's current functioning.

D. The preadmission screening report shall also include the following, as appropriate:

1. A current individualized education plan for school-aged individuals.

2. A vocational assessment for adults.

3. A completed discharge plan outlining the services to be provided upon discharge and anticipated date of discharge.

4. A statement from the individual, family member, or authorized representative requesting services in the training center.

12VAC35-190-30. Criteria for admission.

A. Upon the receipt of a completed preadmission screening report, the director of the training center or designee shall determine eligibility for admission based upon the following criteria:

1. The individual has a diagnosis of ~~mental retardation (intellectual disability)~~ an intellectual disability;

2. The diagnosis of ~~mental retardation~~ an intellectual disability has been made by a licensed professional; and

3. The training center has available space and service capacity to meet the needs of the individual.

B. If the director, in consultation with the assistant commissioner responsible for the training center or his designee, finds that admission is not appropriate, ~~he~~ the director shall state the reasons in a written decision and may recommend an alternative location for needed services.

C. Within 10 working days from the receipt of the completed preadmission screening report, the director of the training center or designee shall provide the written decision on the admission request to the CSB.

VA.R. Doc. No. R19-5200; Filed October 23, 2018, 11:53 a.m.

Fast-Track Regulation

Title of Regulation: **12VAC35-200. Regulations for Emergency and Respite Care Admission to State Training Centers (amending 12VAC35-200-10, 12VAC35-200-20, 12VAC35-200-30).**

Statutory Authority: §§ 37.2-203 and 37.2-807 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 12, 2018.

Effective Date: December 27, 2018.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, TTY (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt 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 and the department.

Purpose: This action is the result of a periodic review. No comments were received during the review. With only two exceptions, the amendments are not substantive and merely update language to mirror language in the Code of Virginia or in 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. The two substantive changes are (i) the addition of the definition of "regional support team" (RST) and the function of the RST to the discharge planning process, which is initiated at admission, and (ii) consultation with the assistant commissioner having responsibility for the training center as a part of the admission process. These two changes mirror practices that have been in place since 2012.

Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of the Code of Virginia allows for emergency or respite admissions to state training centers operated by the Department of Behavioral Health and Developmental Services (DBHDS). For an emergency situation that can be supported through a training center admission after all community resources have been exhausted, or family members or caregivers who seek relief through respite, this regulation is essential to protect the health, safety, and welfare of citizens because it makes clear the procedures for individual emergency and respite admissions to state training centers operated by the Department of Behavioral Health and Developmental Services.

Rationale for Using Fast-Track Rulemaking Process: This action is the result of a periodic review. No comments were received during the review. The amendments merely update language to mirror current language in state law, regulation, or practices that have been in place since 2012.

Substance: The amendments (i) update definitions of authorized representative, community services board, individual, and training center; (ii) add definitions of admission, department, intellectual disability, and regional support team; (iii) add "in consultation with" to two sections to include RSTs in the process described in 12VAC35-200-20 regarding the application for admission and to include the assistant commissioner having responsibility for the training center in 12VAC35-200-30 regarding the criteria for admission; and (iv) delete the definition for "mental retardation" and the term wherever it appears throughout the regulation.

Issues: This action is the result of a periodic review, which includes a public comment period. The proposed amendments will provide clarity for interested stakeholders and the developmental services system, including DBHDS, community services boards, individuals receiving services, and their families, by providing updated language to mirror language in the Code of Virginia and 12VAC35-115, and current practice. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of

the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,[1] the State Board of Behavioral Health and Developmental Services (Board) proposes to: 1) add a definition for "regional support team" (RST);[2] 2) specify that community services boards (CSB) must consult with the RST: prior to preparing an application for respite care at a state training center,[3] in determining whether respite care for the individual in question is available in the community, and in determining whether an application for emergency admission is appropriate due to a lack of services in the community; 3) specify that the director of the training center consult with the assistant commissioner responsible for the training center: in determining eligibility for respite care services or emergency admission, and whether the training center is able to provide emergency services; and 4) update language to mirror language in § 37.2-100 of the Code of Virginia[4] or in 12 VAC 35-115, Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department Of Behavioral Health and Developmental Services.[5]

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

Estimated Economic Impact:

Background. The Regulations for Emergency and Respite Care Admission to State Training Centers are designed to: 1) inform individuals, authorized representatives, Department of Behavioral Health and Developmental Services (DBHDS) employees, CSB staff, and pertinent stakeholders of the process and procedures related to admitting individuals with an intellectual disability to state training centers for the purpose of providing emergency and respite supports, 2) educate responsible persons on the approved criteria for emergency and respite admissions to training centers, and 3) inform individuals and authorized representatives of the appeal process if they should disagree with the admission decision.

In 2012, the federal government and Virginia entered into a settlement agreement[6] concerning how the Commonwealth provides services to its intellectually and developmentally disabled population. As a result of that settlement agreement, RSTs were created, and CSBs were required to consult with the RST for the functions that are proposed to be added in this action. Additionally, the director of training centers have been required to consult with the assistant commissioner as described above.

Analysis. The proposal to update language to mirror the Code of Virginia and 12VAC35-115 provides improved clarity and does not affect requirements in practice. The existence of and requirement for consultation with RSTs, and the requirement for consultation with the assistant commissioner, have been legally required through the settlement agreement since 2012. Thus, the only impact of the proposed language amendments would be to better inform the public of current legal requirements and procedures. Consequently, the benefits of the proposed amendments exceed the costs.

Businesses and Entities Affected. The proposed amendments affect the 40 Virginia CSBs, 3 training centers operated by DBHDS, and 5 RSTs.[7]

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

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

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]See http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1602

[2]Regional support team is defined as "a group of professionals with expertise in serving individuals with developmental disabilities in the community appointed by the commissioner or his designee who provide recommendations to support placement in the most integrated setting appropriate to an individual's needs and consistent with the individual's informed choice."

[3]Respite care is defined as "care provided to an individual with mental retardation (intellectual disability) on a short-term basis because of the emergency absence of or need to provide routine or periodic relief of the primary caregiver for the individual. Services are specifically designed to

provide temporary, substitute care for that which is normally provided by the primary caregiver."

[4]See https://law.lis.virginia.gov/vacode/title37.2/chapter1/section37.2-100/

[5]See https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/

[6]See https://www.justice.gov/sites/default/files/crt/legacy/2012/09/05/va_orderapprovingdecree_8-23-12.pdf

[7]Data Source: Department of Behavioral Health and Developmental Services

Agency's Response to Economic Impact Analysis: The Department of Behavioral Health and Developmental Services concurs with the economic impact analysis.

Summary:

The amendments (i) specify that community services boards must consult with the regional support team regarding respite care services and emergency admissions, (ii) specify that the director of the training center consult with the assistant commissioner responsible for the training center in determining eligibility for respite care services or emergency admission, and (iii) update language.

12VAC35-200-10. Definitions.

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

"Admission" means acceptance of an individual in a training center.

"Authorized representative" or "AR" means a person permitted by law or regulations to authorize the disclosure of information or to consent to treatment and services~~, including medical treatment,~~ or ~~for the~~ participation in human research ~~on behalf of an individual who lacks the mental capacity to make these decisions~~.

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

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of ~~these regulations~~ this chapter, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

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

"Discharge plan" means a written plan prepared by the CSB providing case management, in consultation with the training center pursuant to §§ 37.2-505 and 37.2-837 of the Code of Virginia. This plan is prepared when the individual is admitted to the training center and documents the services to be provided upon discharge.

"Emergency admission" means the temporary acceptance of an individual with ~~mental retardation (intellectual disability)~~ an intellectual disability into a training center when immediate care is necessary and no other community alternatives are available.

"Guardian" means:

1. For minors -- an adult who is either appointed by the court as a legal guardian of a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.

2. For adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § ~~37.2-1000~~ 64.2-2000 of the Code of Virginia.

"Individual" means a person with an intellectual disability for whom ~~respite or emergency~~ services are sought. This term includes the terms "consumer," "patient," "resident," and "client."

"Intellectual disability" means a disability originating before the age of 18 years, 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.

"Less restrictive setting" means the service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

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

"Regional support team" or "RST" means a group of professionals with expertise in serving individuals with developmental disabilities in the community appointed by the commissioner or the commissioner's designee who provide recommendations to support placement in the most integrated

setting appropriate to an individual's needs and consistent with the individual's informed choice.

"Respite care" means care provided to an individual with ~~mental retardation (intellectual disability)~~ an intellectual disability on a short-term basis because of the emergency absence of or need to provide routine or periodic relief of the primary caregiver for the individual. Services are specifically designed to provide temporary, substitute care for that which is normally provided by the primary caregiver.

"Training center" means a facility operated by the ~~Department of Behavioral Health and Developmental Services for the treatment,~~ department that provides training, ~~or~~ habilitation ~~of~~, or other individually focused supports to persons with ~~mental retardation (intellectual disability)~~ intellectual disabilities.

12VAC35-200-20. Respite care admission.

A. Applications for respite care in training centers shall be processed through the CSB providing case management. A parent, guardian, or authorized representative seeking respite care for an individual with ~~mental retardation (intellectual disability)~~ an intellectual disability shall apply first to the CSB that serves the area where the individual, or if a minor, ~~his~~ the minor's parent or guardian is currently residing. The CSB shall consult with the RST prior to preparing an application for respite care. If the CSB, in consultation with the RST, determines that respite care for the individual is not available in the community, ~~it~~ the CSB shall forward an application to ~~the~~ a training center serving individuals with ~~mental retardation (intellectual disability) from that geographic section of the state in which the individual or his parent or guardian is currently residing~~ intellectual disabilities.

The application shall include:

1. An application for services;

2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;

3. A social history and current ~~status~~ housing or living arrangements;

4. A psychological evaluation that reflects the individual's current functioning;

5. A current individualized education plan for ~~school aged~~ school-aged individuals unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

6. A vocational assessment for adults unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received;

7. A statement from the CSB that respite care is not available in the community for the individual;

8. A statement from the CSB that the appropriate arrangements are being made to return the individual to the CSB within the ~~time frame~~ timeframe required under this ~~regulation~~ chapter; and

9. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.

B. Determination of eligibility for respite care services shall be based upon the following criteria:

1. The individual has a diagnosis of ~~mental retardation (intellectual disability)~~ intellectual disability and meets the training center's regular admission criteria;

2. The individual's needs are such that, in the event of a need for temporary care, respite care would not be available in a less restrictive setting; and

3. The training center has appropriate resources to meet the needs of the individual.

By the end of the next working day following receipt of a complete application package, the training center director~~,~~ or the director's designee, in consultation with the assistant commissioner responsible for the training center or the director's designee, shall provide written notice of ~~his~~ the director's decision to the CSB. This notice shall state the reasons for the decision.

If it is determined that the individual is not eligible for respite care, the person seeking respite care may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the training center director, and the training center director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall provide an opportunity for the person seeking respite care to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.

C. Respite care shall be provided in training centers under the following conditions:

1. The length of the respite care stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia;

2. Space and adequate staff coverage are available on a residential living area with an appropriate peer group for the individual and suitable resources to meet his needs; and

3. The training center has resources to meet the individual's health care needs during the scheduled respite stay as determined by a physical examination performed by the training center's health service personnel at the time of the respite admission.

If for any reason a person admitted for respite care is not discharged at the agreed upon time, the CSB shall develop an updated discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.

Respite shall not be used as a mechanism to circumvent the voluntary admissions procedures as provided in § 37.2-806 of the Code of Virginia.

12VAC35-200-30. Emergency admission.

A. In the event of a change in an individual's circumstances necessitating immediate, short-term care for an individual with ~~mental retardation (intellectual disability)~~ an intellectual disability, a parent, guardian, or authorized representative may request emergency admission by calling the CSB serving the area where the individual, or in the case of a minor, ~~his~~ the minor's parent or guardian resides. Under these circumstances if the CSB, in consultation with the RST, determines that services for the individual are not available in the community, ~~it~~ the CSB may request an emergency admission to ~~the~~ a training center serving ~~that geographic area~~ individuals with intellectual disabilities.

The CSB shall make every effort to obtain the same case information required for respite admissions, as described in 12VAC35-200-20 A, before the training center assumes responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency admission.

B. Acceptance for emergency admission shall be based upon the following criteria:

1. A change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;

2. The individual has a diagnosis of ~~mental retardation (intellectual disability)~~ an intellectual disability and meets the training center's regular admissions criteria;

3. All other alternate care resources in the community have been explored and found to be unavailable;

4. Space is available on a residential living area with appropriate resources to meet the individual's needs;

5. The training center's health services personnel have determined that the individual's health care needs can be met by the training center's resources; and

6. The length of the emergency stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia.

C. Within 24 hours of receiving a request for emergency admission, the training center director~~,~~ or the director's designee, in consultation with the assistant commissioner responsible for the training center or his designee, shall inform the CSB whether the individual is eligible for emergency admission and whether the training center is able to provide emergency services.

If the training center is able to provide emergency services, arrangements shall be made to effect the admission as soon as possible.

If the training center is unable to provide emergency services to an eligible individual, the training center director or designee shall provide written notice of this determination to the CSB and may offer in consultation with department staff to try to obtain emergency services from another appropriate facility.

If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.

VA.R. Doc. No. R19-5201; Filed October 23, 2018, 11:57 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board 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 where no agency discretion is involved. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC48-45. Time-Share Regulations (amending 18VAC48-45-20, 18VAC48-45-130, 18VAC48-45-220, 18VAC48-45-330, 18VAC48-45-350, 18VAC48-45-400, 18VAC48-45-430, 18VAC48-45-440, 18VAC48-45-670, 18VAC48-45-680, 18VAC48-45-690, 18VAC48-45-770).**

Statutory Authority: §§ 54.1-2349 and 55-396 of the Code of Virginia.

Effective Date: December 14, 2018.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

Pursuant to Chapters 33 and 133 of the 2018 Acts of Assembly, the amendments change the requirements for (i) escrow of deposits for time-share purchases, (ii) the bond or letter of credit required to be filed with the Common Interest Community Board to insure escrow deposits, and (iii) the registration for time-shares and time-share resellers.

18VAC48-45-20. Definitions.

A. Section 55-362 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Affiliate"	"Offering" or "offer"
"Alternative purchase"	"Person"
"Association"	"Product"
"Board"	"Project"
"Board of directors"	"Public offering statement"
"Common elements"	"Purchaser"
"Contact information"	"Resale purchase contract"
"Contract" or "purchase contract"	"Resale time-share"
"Conversion time-share project"	"Resale service"
"Default"	"Resale transfer contract"
"Developer"	"Reseller"
"Developer control period"	"Reverter deed"
"Development right"	"Situs"
"Dispose" or "disposition"	"Time-share"
"Exchange company"	"Time-share estate"
"Exchange program"	"Time-share expense"
"Guest"	"Time-share instrument"
"Incidental benefit"	"Time-share owner" or "owner"
"Lead dealer"	"Time-share program" or "program"
"Managing agent"	"Time-share project"
"Managing entity"	"Time-share unit" or "unit"
"Material change"	"Time-share use"
	"Transfer"

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

"Alternative disclosure statement" means a disclosure statement for an out-of-state time-share program or time-share project that is properly registered in the situs.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55-394.1 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with the Virginia Real Estate Time-Share Act and this chapter.

"Blanket bond" means a blanket surety bond issued in accordance with the requirements of § 55-375 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing deposits accepted by a developer in connection with the purchase or reservation of a product.

"Blanket letter of credit" means a blanket irrevocable letter of credit issued in accordance with the requirements of § 55-375 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing deposits accepted by a developer in connection with the purchase or reservation of a product.

"Department" means the Department of Professional and Occupational Regulation.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and accurate disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the time-share in order to protect the interests of purchasers.

"Individual bond" means an individual surety bond issued in accordance with the requirements of § 55-375 of the Code of Virginia obtained and maintained by a developer in lieu of

escrowing a deposit accepted by a developer in connection with the purchase or reservation of a product.

"Individual letter of credit" means an individual irrevocable letter of credit issued in accordance with the requirements of § 55-375 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing a deposit accepted by a developer in connection with the purchase or reservation of a product.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular time-share program, time-share project, alternative purchase, exchange company, or time-share reseller registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Virginia Real Estate Time-Share Act" means Chapter 21 (§ 55-360 et seq.) of Title 55 of the Code of Virginia.

18VAC48-45-130. Minimum application requirements for registration of a time-share project.

A. The documents and information contained in §§ 55-367, 55-368, 55-369, 55-371, 55-374, and 55-391.1 of the Code of Virginia, as applicable, shall be included in the application for registration of a time-share project.

B. The application for registration of a time-share project shall include the fee specified in 18VAC48-45-70.

C. The following documents shall be included in the application for registration of a time-share project as exhibits. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.

2. Exhibit B: A certificate of recordation or other acceptable documents from the city or county where the time-share is located.

3. Exhibit C: A copy of the title opinion, the title policy, or a statement of the condition of the title to the time-share project including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the developer or owner, in accordance with subdivision A 5 of § 55-391.1 of the Code of Virginia. If the developer is not the record owner of the land, a copy of any contract the developer has executed to purchase the land, any option the developer holds for the purchase of the land, or any lease under which the developer holds the land.

4. Exhibit D: Proof that the applicant or developer owns or has the right to acquire an estate in the land constituting or to constitute the time-share project, which is of at least as great a degree and duration as the estate to be conveyed in the time-share.

5. Exhibit E: A statement of the zoning, subdivision, or land use obligations or proffers and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax, and existing or proposed special taxes or assessments that affect the time-share.

6. Exhibit F: A copy of the time-share instrument, including all applicable amendments and exhibits, that will be delivered to a purchaser to evidence the purchaser's interest in the time-share and of the contracts and other agreements that a purchaser will be required to agree to or sign.

7. Exhibit G: A narrative description of the promotional plan for the disposition of the time-shares.

8. Exhibit H: A copy of the proposed public offering statement that complies with § 55-374 of the Code of Virginia and this chapter. Pursuant to subsection G of § 55-374, a similar disclosure statement required by other situs laws governing time-sharing may be submitted for a time-share located outside of the Commonwealth.

9. Exhibit I: A copy of the buyer's acknowledgment. Pursuant to § 55-376.5 of the Code of Virginia, the purchaser shall be given this document prior to signing a purchase contract, and the document shall contain the information required by subsection B of § 55-376.5.

10. Exhibit J: ~~Copies of bonds or letters of credit issued by a financial institution, if any, required by subsection C of § 55-375~~ The signed original of (i) any bond or letter of credit obtained pursuant to § 55-375 of the Code of Virginia in lieu of escrowing deposits and (ii) any bond or letter of credit required by subsection B of § 55-386 of the Code of Virginia, as applicable.

11. Exhibit K: A copy of any management agreements and other contracts or agreements affecting the overall use, maintenance, management, or access of all or any part of the time-share project.

12. Exhibit L: A list with the names of every officer, manager, owner, or principal, as applicable to the type of firm under which the developer is organized to do business, of the developer or persons occupying a similar status within or performing similar functions for the developer. The list must include each individual's residential address or other address valid for receipt of service, principal occupation for the past five years, and title.

13. Exhibit M: A statement whether any of the individuals or entities named in Exhibit L are or have been involved as defendants in any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.

14. Exhibit N: A statement whether, during the preceding five years, any of the individuals or entities named in Exhibit L have been adjudicated bankrupt or have undergone any proceeding for the relief of debtors.

15. Exhibit O: If the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase, a description of the incidental benefit or alternative purchase shall be provided pursuant to subdivision A 13 of § 55-391.1 of the Code of Virginia.

16. Exhibit P: Conversion time-share projects must attach a copy of the notice required by subsection D of § 55-374 of the Code of Virginia and a certified statement that such notice shall be mailed or delivered to each of the tenants in the building or buildings for which the registration is sought at the time of the registration of the conversion project.

18VAC48-45-220. Narrative sections; terms of offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a time-share and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate any initial or special fees due from the purchaser at settlement including a description of the purpose of such fees.

C. The section shall set forth a general description of any financing offered by or available through the developer to purchasers.

D. The section shall describe (i) services that the developer provides or expenses it pays and that it expects may become at any subsequent time a time-share expense of the owners and (ii) the projected time-share expense liability attributable to each of those services or expenses for each time-share.

E. The section shall discuss all penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract.

F. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with § 55-376 of the Code of Virginia. The section shall include a statement that the purchaser has a nonwaivable right of cancellation and refer such purchaser to that portion of the contract in which the right of cancellation may be found.

G. The section shall describe the terms of the deposit escrow requirements, including a statement, if applicable, that the developer has filed a surety bond or letter of credit with the board in lieu of escrowing deposits, in accordance with § 55-375 of the Code of Virginia. The section shall also state that deposits may be removed from escrow ~~at the termination~~ and no longer protected by a surety bond or letter of credit after the expiration of the cancellation period.

H. The section shall set forth all restrictions in the purchase contract that limit the time-share owner's right to bring legal action against the developer or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

Part VI
Time-Share Project Post-Registration Provisions

18VAC48-45-330. Minimum post-registration reporting requirements for a time-share project.

A. Subsequent to the issuance of a registration for a time-share by the board, the developer of a time-share shall do the following:

1. File an annual report in accordance with § 55-394.1 of the Code of Virginia and this chapter.

2. Upon the occurrence of a material change, file an amended public offering statement in accordance with the provisions of subsection E of § 55-374 and subsection C of § 55-394.1 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.

3. Upon the occurrence of any material change in the information contained in the registration file, the developer shall immediately report such material changes to the board in accordance with the provisions of subsection B of § 55-391.1 of the Code of Virginia.

4. Notify the board of a change in ~~the~~ any bond or letter of credit, as applicable, filed with the board in accordance with § 55-375 of the Code of Virginia or required by ~~subsection C of § 55-375 and~~ subsection B of § 55-386 of the Code of Virginia.

5. File a completed application for registration of an unregistered phase or phases upon the expansion of the time-share, along with the appropriate fee specified in 18VAC48-45-70.

6. Notify the board of transition of control from the developer to the time-share estate owners' association (time-share estate projects only).

7. Submit appropriate documentation to the board once the registration is eligible for termination.

8. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

9. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a developer to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

18VAC48-45-350. Nonmaterial changes to the public offering statement.

Changes to the public offering statement that are not material are not required to be filed with the board, shall not be deemed an amendment of the public offering statement for the purposes of this chapter, and shall not give rise to a renewed right of rescission in any purchase. Nonmaterial changes to the public offering statement include~~, but may not be limited to,~~ the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;

2. Changes in presentation or format;

3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;

4. Inclusion of updated information such as identification or description of the current officers and directors of the developer;

5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;

6. Changes in real estate tax assessment or rate or modifications related to those changes;

7. Changes in utility charges or rates or modifications related to those changes;

8. Addition or deletion of incidental benefits or alternative purchases provided the developer reserved in the time-share instrument the right to add or delete incidental benefits or alternative purchases;

9. Adoption of a new budget that does not result in a significant change in fees or assessments or significantly impact the rights or obligations of the prospective purchasers;

10. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit filed with the board in accordance with § 55-375 of the Code of Virginia or required pursuant to ~~§§ 55-375 and~~ § 55-386 of the Code of Virginia;

11. Changes in personnel of the managing agent; and

12. Any change that is the result of orderly development of the time-share in accordance with the time-share instruments as described in the public offering statement.

18VAC48-45-400. Annual report for a time-share project registration required by developer.

A. A developer shall file an annual report for a time-share project registration on a form provided by the board to update the material contained in the registration file by June 30 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70. Prior to filing the annual report required by § 55-394.1 of the Code of Virginia, the developer shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the developer shall so certify in the annual report. If such public offering statement is not current, the developer shall amend the public offering statement and the annual report shall, in that event, include a filing in accordance with 18VAC48-45-360.

B. The annual report shall contain~~, but may not be limited to,~~ the following:

1. Current contact information for the developer;

2. Information concerning the current status of the time-share project;

3. Information concerning the current status of the time-share program, including (i) the type of time-shares being offered and sold; (ii) the total number of time-share interests available in the program; (iii) the total number of time-share interests sold; and (iv) information regarding any incomplete units and common elements;

4. If the project is a time-share estate project and the developer control period has not yet expired, a copy of the annual report that was prepared and distributed by the developer to the time-share owners required by § 55-370.1 of the Code of Virginia must accompany the annual report;

5. Date of the public offering statement currently being delivered to purchasers; and

6. Current evidence from the surety or financial institution of bonds or letters of credit~~, or submittal of replacement bonds or letters of credit,~~ filed with the board in accordance with § 55-375 of the Code of Virginia or required pursuant ~~to subsection C of § 55-375 and~~ subsection B of § 55-386 of the Code of Virginia, or submittal of replacement bonds or letters of credit. Such verification shall provide the following:

a. Principal of bond or letter of credit;

b. Beneficiary of bond or letter of credit;

c. Name of the surety or financial institution that issued the bond or letter of credit;

d. Bond or letter of credit number as assigned by the issuer;

e. The dollar amount; ~~and~~

f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed; and

g. For any blanket bond or blanket letter of credit, a statement of the total amount of deposits held by the developer as of May 31 of that calendar year.

18VAC48-45-430. Return of bond or letter of credit ~~upon termination of time-share project registration~~ filed in lieu of escrowing deposits.

A. An individual bond or individual letter of credit on file with the board in accordance with § 55-375 of the Code of Virginia may be returned to the developer upon written request. Such request shall include a statement from the developer that indicates (i) the purchaser's cancellation period has expired, (ii) the purchaser's default under a purchase contract for the time-share estate entitling the developer to retain the deposit, or (iii) the purchaser's deposit was refunded.

B. Upon issuance of an order of termination of the time-share project registration pursuant to 18VAC48-45-450, ~~the~~ a blanket bond or blanket letter of credit on file with the board ~~for the purpose of protecting all deposits escrowed pursuant to subsection C of~~ in accordance with § 55-375 of the Code of Virginia will be returned to the developer.

18VAC48-45-440. Maintenance of bond or letter of credit.

A. The developer shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with ~~subsection C of~~ § 55-375 and subsection B of § 55-386 of the Code of Virginia within five days of the change.

B. The board at any time may request verification from the developer of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 6 of 18VAC48-45-400.

C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to the Virginia Real Estate Time-Share Act.

18VAC48-45-670. Requirements for registration as a time-share reseller.

A. Individuals or firms that provide any time-share resale services shall submit an application on a form prescribed by the board and shall meet the requirements of this section, including:

1. The information contained in § 55-394.3 of the Code of Virginia.

2. The application fee specified in 18VAC48-45-70.

3. All contact information applicable to the time-share reseller and the lead dealer.

B. Any individual or firm offering resale services as defined in § 55-362 of the Code of Virginia shall be registered with the board. All names under which the time-share reseller conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for a time-share reseller registration shall disclose the firm's mailing address and the firm's physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a time-share reseller registration shall disclose the following information about the firm, the lead dealer, and any of the principals of the firm, if applicable:

1. All felony convictions.

2. All misdemeanor convictions in any jurisdiction that occurred within three years before the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

~~E. The applicant shall obtain and maintain a bond or letter of credit pursuant to § 55-375 of the Code of Virginia, for the~~

~~purpose of protecting deposits and refundable moneys received by a time-share reseller from clients in the Commonwealth of Virginia in connection with the purchase, acquisition, or sale of a time-share.~~

~~F.~~ E. The applicant for time-share reseller registration shall be in compliance with the standards of conduct set forth in Part X (18VAC48-45-720 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the registration is in effect.

~~G.~~ F. The applicant for time-share reseller registration, the lead dealer, and all principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered, and the board, in its discretion, may deny registration to any applicant who has been subject to, or whose lead dealer or principals have been subject to, any form of adverse disciplinary action, including ~~but not limited to,~~ reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining registration in Virginia.

~~H.~~ G. The applicant for time-share reseller registration shall provide all relevant information about the firm, the lead dealer, and of the principals of the firm for the seven years prior to application on outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies and specifically shall provide all relevant financial information related to providing resale services as defined in § 55-362 of the Code of Virginia.

~~I.~~ H. The application for time-share reseller registration shall include the exhibits required pursuant to 18VAC48-45-680.

18VAC48-45-680. Exhibits required for registration as a time-share reseller.

A. The following documents shall be included as exhibits to the application for registration. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.

2. Exhibit B: A copy of the resale purchase contract.

3. Exhibit C: A copy of the resale transfer contract.

4. Exhibit D: A copy of disclosures required by § 55-380.1 of the Code of Virginia.

5. Exhibit E: A narrative description of the marketing or advertising plan.

~~6. Exhibit F: A bond or letter of credit in accordance with subsection E of 18VAC48-45-670.~~

B. The board has the sole discretion to require additional information or amendment of existing information as the board finds necessary to ensure full and accurate disclosure and compliance with the provisions of § 55-380.1 of the Code of Virginia and to ensure compliance with the provisions of § 55-394.3 of the Code of Virginia.

18VAC48-45-690. Renewal and reinstatement of a time-share reseller registration.

A. A time-share reseller registration issued under this chapter shall expire one year from the last day of the month in which it was issued. The fee specified in 18VAC48-45-70 shall be required for renewal.

B. Prior to the expiration date shown on the registration, a registration shall be renewed upon payment of the fees specified in 18VAC48-45-70 ~~and submittal of proof of a current bond or letter of credit required in accordance with subsection E of 18VAC48-45-670~~.

C. The board will send a renewal notice to the regulant at the last known address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the registration may be submitted with the required fees as an application for renewal. By submitting a renewal fee, the regulant is certifying continued compliance with this chapter, as applicable, and certifying that all documents required for registration pursuant to 18VAC48-45-680 on file with the board reflect the most current version used by the reseller.

D. If the requirements for renewal of a registration as specified in this chapter are not completed more than 30 days and within six months after the registration expiration date, the reinstatement fee specified in 18VAC48-50-70 shall be required.

E. A registration may be reinstated for up to six months following the expiration date. After six months, the registration may not be reinstated under any circumstances, and the firm or individual must meet all current entry requirements and apply as a new applicant.

F. The board may deny renewal or reinstatement of registration for the same reasons as it may refuse initial registration or discipline a registrant.

G. The date the renewal application and fee are received in the office of the board shall determine whether a registration shall be renewed without reinstatement, or shall be subject to reinstatement application procedures.

H. A registration that is reinstated shall be regarded as having been continuously registered without interruption. Therefore, the registration holder shall remain under the disciplinary authority of the board during the entire period

and shall be accountable for its activities during the period. Nothing in this chapter shall divest the board of its authority to discipline a registration holder for a violation of the law or regulation during the period of time for which the regulant was registered.

I. Applicants for renewal shall continue to meet all of the qualifications for registration set forth in 18VAC48-45-680.

18VAC48-45-770. Prohibited acts.

The following acts are prohibited and any violation may result in action by the board, including ~~but not limited to~~ issuance of a temporary cease and desist order in accordance with subdivision D 2 of § 55-396 of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any regulation of the board or the Virginia Real Estate Time-Share Act or engaging in any act enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining, renewing, or reinstating a registration by false or fraudulent representation.

3. Failing to alter or amend the public offering statement or disclosure document as required in accordance with the provisions of this chapter.

4. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and accurate disclosure.

5. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

6. Failing to provide information or documents, or amendments thereof, in accordance with this chapter.

7. Failing to comply with the post-registration requirements of this chapter.

8. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-45-450, 18VAC48-45-460, ~~18VAC48-50-560~~ 18VAC48-45-560, or ~~18VAC48-50-630~~ 18VAC48-45-630.

9. Failing to comply with the advertising standards contained in Part III (18VAC48-45-80 et seq.) of this chapter.

~~10. Failing to notify the board of the cancellation, amendment, expiration, termination, or any other change that affects the validity of a bond or letter of credit required pursuant to subsection E of 18VAC48-45-670.~~

~~11.~~ 10. Allowing a registration issued by the board to be used by another.

~~12.~~ 11. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation described in subdivisions C 13 and C 14 of 18VAC48-45-130, subdivisions 4 and 5 of 18VAC48-45-210, and subsections D, ~~C~~ F, and ~~H~~ G of 18VAC48-45-670.

~~13.~~ 12. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation described in subsections D, ~~C~~ F, and ~~H~~ G of 18VAC48-45-670.

~~14.~~ 13. Failing to report a change as required by 18VAC48-45-470.

~~15.~~ 14. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

~~16.~~ 15. Misrepresenting or misusing the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

~~17.~~ 16. Engaging in dishonest ~~of~~ or fraudulent conduct in providing resale services, including ~~but not limited to~~ the following:

a. The intentional and unjustified failure to comply with the terms of the resale purchase contract or resale transfer contract.

b. Engaging in dishonest or fraudulent conduct in providing resale services.

c. Failing to comply with the recordkeeping requirements of § 55-394.4 of the Code of Virginia.

d. Failing to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

e. Making false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

f. Misrepresenting the likelihood of selling a resale time-share interest.

g. Misrepresenting the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

h. Misrepresenting price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

i. Making false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-

share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third party.

j. Misrepresenting whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

k. Misrepresenting how funds will be utilized in any time-share resale activity conducted by the reseller.

l. Misrepresenting that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

m. Making false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.

n. Representing that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.

o. Misrepresenting the nature of any resale time-share interest or the related time-share plan.

p. Misrepresenting the amount of the proceeds, or failing to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.

q. Failing to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.

r. Failing to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC48-45)

~~Time-Share Amendment Application A492-0515AMEND-v1 (eff. 9/2013)~~

~~Time-Share Annual Report A492-0515ANRPT-v2 (eff. 5/2014)~~

Time-Share Registration/Amendment Application A492-0515REG-v2 (eff. 10/2018)

Time-Share Annual Report A492-0515ANRPT-v4 (eff. 10/2018)

Time-Share Building Status Form A492-0515BLDST-v1 (eff. 9/2013)

~~Time-Share Bond/Letter of Credit Verification Form A492-0515BOND-v1 (eff. 9/2013)~~

Time-Share Bond/Letter of Credit Verification Form A492-0515BOND-v2 (eff. 10/2018)

~~Time-Share Registration Application A492-0515REG-v1 (eff. 9/2013)~~

Time-Share Exchange Company Annual Report A492-0516ANRPT-v1 (eff. 9/2013)

Time-Share Exchange Company Registration Application A492-0516REG-v1 (eff. 9/2013)

Alternative Purchase Annual Report A492-0524ANRPT-v1 (eff. 10/2015)

Alternative Purchase Registration Application A492-0524REG-v1 (eff. 10/2015)

~~Time-Share Reseller Bond/Letter of Credit Verification Form A492-0525BOND-v1 (eff. 1/2016)~~

Time-Share Reseller Lead Dealer Change Form A492-0525LDCHG-v1 (eff. 1/2016)

~~Time-Share Reseller Application A492-0525REG-v1 (eff. 2015)~~

Time-Share Reseller Registration Application A492-0525REG-v2 (eff. 10/2018)

VA.R. Doc. No. R19-5493; Filed October 19, 2018, 1:53 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Fast-Track Regulation

Title of Regulation: **19VAC30-40. Standards and Specifications for the Stickers or Decals Used by Cities, Counties and Towns in Lieu of License Plates (amending 19VAC30-40-30).**

Statutory Authority: § 46.2-1052 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 12, 2018.

Effective Date: January 1, 2019.

Agency Contact: Kirk Marlowe, Regulatory Coordinator, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Basis: Section 46.2-1052 of the Code of Virginia authorizes the Superintendent of State Police to promulgate regulations stipulating size and location of stickers or decals.

Purpose: In 2017, the regulations relating to the placement of the Virginia motor vehicle inspection sticker were amended to shift the placement of that sticker from the lower center to the lower left-hand corner of the windshield when viewed from inside the vehicle. That amendment impacts the optional placement of the sticker and requires this regulation to be amended to reflect the new proper positioning for the county, city, or town sticker. The change is necessary to allow for the lawful placement of the county sticker so that it does not interfere with the operator's vision and will not obstruct the proper placement of the inspection sticker. Improper placement of stickers on the windshield would interfere with the operator's vision and endanger the public by limiting the operator's ability to observe pedestrians, hazards, and other traffic.

Rationale for Using Fast-Track Rulemaking Process: The amendment is intended to ensure that the placement of the county, city, or town sticker does not interfere with the placement of the Virginia inspection sticker and to ensure that any placement does not illegally interfere with the vehicle operator's clear field of vision. The change in placement provides two options and does not add or remove any requirement for such sticker.

Substance: 19VAC30-40-30 is amended to allow the owner of the vehicle an option to place a county, city, or town sticker or decal either next to the Virginia motor vehicle inspection sticker in the lower driver's side corner of the windshield or behind the rear view mirror. The current regulation allows a placement that may interfere with proper display of the inspection sticker.

Issues: The amendment ensures that the placement of the county, city, or town sticker does not interfere with the placement of the mandatory Virginia inspection sticker and prohibits placements that would impair the driver's field of vision. There are no advantages or disadvantages to the public, Commonwealth, or agency in the placement of the sticker other than the improper placement may limit the operator's visibility thereby endangering the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of State Police (DSP) proposes to amend the text concerning where owners of vehicles in localities where stickers or decals are used in lieu of license plates may place the sticker or decal on their vehicle. The proposed change is in response to a change to the Motor Vehicle Safety Inspection Regulations (19VAC30-70) that produced a conflict.

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

Estimated Economic Impact. The current Standards and Specifications for the Stickers or Decals Used By Cities, Counties and Towns in Lieu of License Plates (19VAC30-40) states that the sticker or decal shall be placed at the bottom of the windshield adjacent to the right side of the official inspection sticker when viewed through the windshield from inside the vehicle, or may be affixed at the lower left corner of the windshield.

Through an exempt action[1] that became effective on January 26, 2018, DSP amended the Motor Vehicle Safety Inspection Regulations (19VAC30-70) to shift the required placement of the Virginia motor vehicle inspection sticker from the lower center to the lower left hand corner of the windshield, when viewed from inside the vehicle. That amendment affects the optional placement of the sticker or decal used by counties, cities, and towns in lieu of license plates.

Thus, DSP proposes to amend Standards and Specifications for the Stickers or Decals Used By Cities, Counties and Towns in Lieu of License Plates (19VAC30-40) to reflect a new positioning for the county of city sticker that does not conflict with the Commonwealth's inspection sticker. That location is "the blind spot behind the rear view mirror." The proposed amendment produces a net benefit since it eliminates a conflict with another regulation, and does not produce a cost.

Businesses and Entities Affected. The proposed amendment affects owners of vehicles in the counties and cities that require a county or city sticker or decal.

Localities Particularly Affected. The Counties of Amelia, Buckingham, Caroline, Fairfax, Grayson, Pulaski, Rockbridge, Tazewell, and Warren, and the Cities of Buena Vista, Colonial Heights, Falls Church, and Petersburg, all require stickers or decals. Thus, these localities are particularly affected.

Projected Impact on Employment. The proposed amendment would not affect employment.

Effects on the Use and Value of Private Property. The proposed amendment would not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendment would not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendment would not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment would not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment would not adversely affect businesses.

Localities. The proposed amendment would not adversely affect localities.

Other Entities. The proposed amendment would not adversely affect other entities.

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[1]See http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4947

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

Summary:

The amendment specifies the size and location of stickers placed on the windshields of motor vehicles in the cases where a sticker is required by a county, city, or town. A required sticker may be placed either behind the rear view mirror or adjacent to the Virginia motor vehicle inspection sticker located in driver's side lower corner of the windshield.

19VAC30-40-30. Placement.

The sticker or decal shall be placed at the bottom of the windshield adjacent to the right side of the official inspection sticker when viewed through the windshield from inside the vehicle. The side edge adjacent to the official inspection sticker shall not be more than 1/4 inch from the edge of the official inspection sticker. At the option of the motor vehicle's owner, the sticker or decal, provided it measures not more than two and one-half inches in width and four inches in length, may be ~~affixed at the lower left corner of the windshield so that the inside or left edge of the sticker or decal is within one inch of the extreme left edge of the windshield when looking through the windshield from inside the vehicle. When placed at this location, the bottom edge of the sticker or decal must be affixed within three inches of the bottom of the windshield~~ placed in the blind spot behind the rear view mirror.

VA.R. Doc. No. R19-5611; Filed October 23, 2018, 11:02 a.m.

EXECUTIVE ORDER NUMBER TWENTY-THREE (2018)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Hurricane Michael and in Support of States Affected by the Storm

Importance of the Issue

On this date, October 11, 2018, I declare that a state of emergency exists in the Commonwealth of Virginia based on the need to prepare and coordinate our response to potential impacts from Hurricane Michael, a Category 4 storm that will impact Florida, Georgia, South Carolina, North Carolina, and Virginia. This storm could produce heavy rainfall, power outages, and flooding in the Commonwealth and result in severe impacts to the southeastern portions of the United States, including loss of life and infrastructure damage. In order to save lives, restore infrastructure damage, assist other states impacted by this storm, and facilitate the rapid movement of private sector and public resources from and through Virginia, I hereby authorize state preparations under the full authorities of this Office.

State action is required to protect the health and general welfare of Virginia residents. The anticipated effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency exists. Accordingly, I direct state and local governments to render appropriate assistance to prepare for potential storm impacts, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I order the following:

A. Implementation of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, by state agencies along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Activation of the Virginia National Guard and the Virginia Defense Force to state active duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security) may find necessary. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the Virginia State Police officers appointed by the Superintendent. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for these additional police officers at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

D. Evacuation of areas threatened or stricken by effects of this event, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas upon a determination by the State Coordinator of Emergency Management. I reserve the right to control the ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein based upon a determination made by the State Coordinator of Emergency Management. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. This Emergency Declaration implements limited relief from the provisions of 49 CFR §§ 390.23 and 395.3 for the

purpose of providing direct relief or assistance as a result of this disaster.

G. Authorization of the Virginia Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, license, or hours of service exemptions to all carriers transporting essential emergency relief supplies to, through and from any area of the Commonwealth. This authorization also applies to water, food, heating oil, motor fuels or propane, or agricultural products, agricultural supplies, livestock and poultry, livestock and poultry feed, forest products and salvaged wood, waste, and trees cut in preparation for the storm, or providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) or removal of waste to, through and from any area of the Commonwealth in order to support the disaster response and recovery, regardless of the point of origin or destination. Weight exemptions are not valid on posted structures for restricted weight. Weight exemptions are also not valid on interstate highways unless there is an associated Federal emergency declaration. The exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the initial declaration of emergency, whichever is less.

1. All over-width loads, up to a maximum of 12 feet, and over-height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles' hauling permit and safety guidelines.

2. In addition to described overweight/over-width transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route or returning to their home base. The agencies cited in this provision shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

H. Implementation and discontinuance of the transportation-related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this Order as set forth in § 2.2-104 of the Code of Virginia.

I. Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

J. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by state agencies to respond to this situation.

K. Authorization for the heads of executive branch agencies, with the concurrence of their Cabinet Secretary, to act, when appropriate, on behalf of their regulatory boards to waive any state requirement or regulation when the federal government has waived the corresponding federal or state regulation based on the impact of events related to this situation.

L. Authorization for the State Veterinarian to grant exemptions for specific requirements for the importation of agricultural and companion animals into the Commonwealth from affected areas.

M. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

N. Authorization of a maximum of $2,000,000 in state sum sufficient funds for state and local government mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act, 42 USC § 5121 et seq. and the EMAC. Such funding shall be based on the reimbursements anticipated under the Emergency Management Assistance Compact (EMCA). This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, an amount estimated at $250,000 is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs. Such costs include any amounts incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

O. Authorization of up to $100,000 in sum sufficient funds shall be made available for operation of the VEOC.

P. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

Q. During this declared emergency, any person who holds a license, certificate, or other permit issued by any U.S. territory, state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during this emergency and such person shall not be liable for negligently causing the death of, or injury to any person or for the loss of,

or damage to, the property of any person resulting from such service as set forth in § 44-146.23(C) of the Code of Virginia. Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia shall not be liable for the death of, or any injury to, persons or damage to property as a result of such activities, as provided in § 44-146.23(A) of the Code of Virginia.

R. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations, political subdivisions and other private entities by state agencies, including the Departments of Health, Behavioral Health and Developmental Services, Social Services, Emergency Management, Transportation, State Police, Motor Vehicles, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia, in the performance of their disaster-related mission assignments.

S. As provided in § 44-146.23(A) of the Code of Virginia, no individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities at the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of this emergency.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective October 11, 2018, and shall remain in full force and in effect until November 11, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 11th day of October, 2018.

/s/ Ralph S. Northam
Governor

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Alcoholic Beverage Control Authority is conducting a periodic review and small business impact review of **3VAC5-20, Advertising**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 12, 2018, and ends December 4, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to LaTonya D. Hucks-Watkins, Legal Liaison, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Alcoholic Beverage Control Authority is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

3VAC5-10, Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers

3VAC5-30, Tied-House

3VAC5-60, Manufacturers and Wholesalers Operations

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 26, 2018, and ends December 18, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to LaTonya D. Hucks-Watkins, Legal Liaison, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Alcoholic Beverage Control Authority is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

3VAC5-50, Retail Operations

3VAC5-70, Other Provisions

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins December 10, 2018, and ends January 2, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to LaTonya D. Hucks-Watkins, Legal Liaison, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a small business impact review of **12VAC35-180, Regulations to Assure the Protection of Subjects in Human Research**, and determined that this regulation should be retained in its current form. The State Board of Behavioral Health and Developmental Services is publishing its report of findings dated October 9, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation needs to remain in place to ensure the health, safety, and welfare of the individuals involved in human research. There is no reason to delay the adoption of these changes by using the standard process; there were no comments received during the public comment period of the periodic review. The structure set out in the regulation is in accordance with other applicable federal and state laws and regulations. It is not legally possible to minimize compliance and reporting requirements. This type of research is rare in the behavioral health and developmental services system, and the framework within which the research can be conducted is narrow. Thus, the impact to the provider is negligible and the edits represent only existing statute or regulation.

Contact Information: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

Notice of Public Hearing to Receive Comment on 12VAC35-250, Peer Recovery Specialists

Public hearing: November 19, 2018, 1 p.m., the Department of Behavioral Health and Developmental Services, Central Office, 11th Floor Conference Room, Jefferson Building, 1220 Bank Street, Richmond, VA 23219. The public hearing will be held from 1 p.m. until 3 p.m.

The purpose of the public hearing is to receive comment as part of the standard permanent regulatory adoption process for 12VAC35-250, Peer Recovery Specialists. This new regulation provides administrative structure for Department of Behavioral Health and Developmental Services qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge. An agenda is available at http://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=28391.

If accommodation is required for special needs, please notify the agency contact listed below.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

October 1, 2018

Administrative Letter 2018-06

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia and Interested Parties

RE: Credit Life Insurance and Credit Accident and Sickness Insurance Premium Rates Effective January 1, 2019

This Administrative Letter Withdraws and Replaces Administrative Letter 2015-12.

On August 22, 2018, the Virginia State Corporation Commission (the "Commission") issued an Order Adopting Adjusted Prima Facie Rates for the Triennium Commencing January 1, 2019, Case No. INS-2018-00030. All insurers licensed to market credit life insurance or credit accident and sickness insurance in Virginia were mailed a copy of the Order and the adopted rates on August 24, 2018. Pursuant to § 38.2-3725 D and E of the Code of Virginia, the adjusted prima facie rates for the triennium commencing January 1, 2019 will remain in effect until January 1, 2022.

Each company marketing credit life insurance or credit accident and sickness insurance in Virginia must submit the rates and refund formulas applicable to the upcoming triennium to the Bureau for approval if its rates currently on file exceed the adjusted prima facie rates set forth in Case No. INS-2018-00030. Each filing should include the following information:

• The specific single premium and monthly outstanding balance (MOB) rates and rate formulas, and examples of the rate formulas;

• All refund formulas, including examples;

• Any other information required to document the development of the rates and refund formulas;

• The date of previously approved formulas;

• The form number to which each rate or formula will apply; and

• A description of the referenced forms.

A request for approval of a deviated premium rate or rates to be effective on or after January 1, 2019 may be included as part of the filing referenced above. It should be noted that previously approved deviated premium rates can only be used through December 31, 2018, in accordance with § 38.2-3728 C 1 of the Code of Virginia.

The filing requirement checklists for credit life insurance and credit accident and sickness insurance filings may be found on the Bureau's website at http://www.scc.virginia.gov/boi/co/health/lh_check.aspx.

My staff will review filings as promptly as possible; however, companies that delay making filings until after December 1, 2018 cannot be assured that our review will be completed by January 1, 2019. Any insurer with rates currently on file that exceed the adjusted prima facie rates set forth in Case No. INS-2018-00030 that has not received the Bureau's approval of its revised rates and refund formulas on or before January 1, 2019 must cease marketing credit life insurance or credit accident and sickness insurance in Virginia as of January 1, 2019 and must cease charging premiums for existing MOB contracts as of January 1, 2019 until such date that it has received the Commission's approval, as noted above.

Any questions with regards to any of the above matters should be directed to Amanda G. McCauley, Principal Insurance Market Examiner, Life and Health Division, State Corporation Commission, telephone (804) 371-0034, or email amanda.mccauley@scc.virginia.gov.

/s/ Scott A. White
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Greenwood Solar I LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Culpeper County

The Department of Environmental Quality has received a withdrawal of a notice of intent from Open Road Renewables LLC and a new notice of intent from NextEra Energy Resources for a permit by rule for a small renewable energy project proposed by Greenwood Solar I LLC in Culpeper County. The project is located approximately one mile south of Stevensburg on the south side of State Route 3. The project will be constructed on multiple parcels of land totaling approximately 1,000 acres and will use conventional solar panels to deliver up to 100 megawatts of electricity (alternating current) to an existing transmission line. The preliminary design of the project calls for the project to use approximately 380,000 solar panels. The notice of intent submitted by Open Road Renewables LLC was published in the Virginia Register on August 21, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Greensville County Solar Project LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Greensville County

Greensville County Solar Project LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) near Emporia pursuant to Virginia regulation. The notice of intent is for an 80-megawatt alternating current solar project. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology constructed on approximately 1,185 acres. The project site is located outside of the city limits of Emporia along Rock Bridge Road. A solar project is permitted under this use category through a special use permit from Greensville County Board of Supervisors and will not require rezoning.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Westmoreland County Solar Project LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Westmoreland County

Westmoreland County Solar Project LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) near Warsaw pursuant to Virginia regulation. The notice of intent is for a 20-megawatt alternating current solar project. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology constructed on approximately 161 acres. The project site is located outside of the city limits of Warsaw, south of Woodbine Road. A solar project is permitted under this use category through a special use permit from Westmoreland County Land Use Administration and will not require rezoning.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400,

P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Alliance Development Group LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Alliance Development Group LLC

Alliance Development Group LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in South Chesterfield in Chesterfield County pursuant to Virginia regulation. The Alliance Development Group's solar power project, Children of Chesterfield Solar Power, will be developed on approximately 165 acres of land leased from the Children's Home Virginia Baptist. Solar panels, racking systems, and electrical equipment will cover and occupy about 135 acres. The facility design is 20 megawatts alternating current power and will consist of approximately 74,400 solar panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

BOARD OF JUVENILE JUSTICE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

6VAC35-30, Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs

6VAC35-60, Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 12, 2018, and ends December 12, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 588-3902, FAX (804) 371-6497, or email kristen.peterson@djj.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on October 24, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Forty-Six (18)

Virginia Lottery "Holiday Cheer Extra 1% Commission Retailer Incentive Promotion 2018" (effective November 6, 2018)

Director's Order Number One Hundred Fifty-Nine (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play $50,000 Blackjack" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty-One (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Daily Crossword" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty-Two (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Diamond Club Crossword" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty-Three (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Gold Rush Crossword" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty-Four (18)

Virginia Lottery's Computer-Generated Game "Print 'n Play Smokin' Hot Crossword" Final Rules for Game Operation (effective December 2, 2018)

Director's Order Number One Hundred Sixty-Five (18)

Certain Virginia Print 'n Play Games: End of Games (effective December 1, 2018)

Virginia Lottery's Print 'n Play Blackjack Classic (86 2018)

Virginia Lottery's Print 'n Play Extreme Crossword (87 2018)

Virginia Lottery's Print 'n Play High Stakes Blackjack (88 2018)

Virginia Lottery's Print 'n Play Horoscope Crossword (89 2018)

Virginia Lottery's Print 'n Play Money Bag Crossword (90 2018)

Virginia Lottery's Print 'n Play Platinum Crossword (91 2018)

Director's Order Number One Hundred Sixty-Seven (18)

Certain Virginia Promotion; Prize Structure Correction: Super Bonus Crossword Promotion (155 2018) (this Director's Order is effective nunc pro tunc to October 1, 2018, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment for Draft Medicaid Long-Term Services and Supports Screening Provider Manual

Comment period: October 17, 2018, through November 16, 2018.

Changes to the Medicaid Long-Term Services and Supports Screening Provider Manual are now posted on the Department of Medical Assistance website at http://www.dmas.virginia.gov/#/manualdraft for public comment through November 16, 2018. The manual will be finalized and officially posted by November 29, 2018. Finalized manuals can be found at https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual.

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.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Medical Assistance Services is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

12VAC30-5, Public Participation Guidelines

12VAC30-95, Standards Established and Methods Used for Fee-for-Service Reimbursement

12VAC30-150, Uninsured Medical Catastrophe Fund

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 12, 2018, and ends December 4, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Jimeequa Williams, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23223, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE BOARD OF SOCIAL SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a small business impact review of **22VAC40-411, General Relief Program**, and determined that this regulation should be retained in its current form. The State Board of Social Services is publishing its report of findings dated December 13, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

No comments were received during the periodic review. The regulation was last amended in July 2013, when certain components of the program were eliminated. Upon review, it was determined that this regulation remains necessary to protect the welfare of citizens who are in need of general relief assistance. However, the regulation omits critical

information in the eligibility determination process, and therefore, it is necessary to amend the regulation. As this is a state and local program, there are no overarching federal regulations.

Contact Information: Monique Majeus, Senior Economic Assistance and Employment Consultant/TANF, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7940, FAX (804) 726-7357, or email monique.majeus@dss.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-90, Solid Waste Management Permit Action Fees and Annual Fees**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated October 1, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The current regulation continues to be needed. This regulation is consistent with the requirements of state law and partially funds the oversight of permitted solid waste management facilities. There is no corresponding federal regulation concerning the assessment of a solid waste permit application or the assessment of solid waste permit oversight fees. No public comments were received during the periodic review comment period. The regulation details the fees for permit actions as well as annual permit fees. The regulation may be viewed as complex by some readers since it details the adjustment by the consumer price index (inflation); however, the agency calculates the adjusted fees and amount due from the permit holder as part of the annual billing process. This regulation was last amended in 2013 in response to changes in state law.

Businesses that undertake activities requiring a solid waste management permit are subject to this regulation. Some fees are based on the amount of time to issue a permit action. Other fees are based on the amount of waste material managed. Small businesses generally manage less waste than businesses that are not small businesses and therefore would be subject to smaller annual fees than larger businesses.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-170, Transportation of Solid and Medical Wastes on State Waters**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated October 1, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The primary goal of this regulation is to protect the environment from discharges of solid wastes, regulated medical wastes, and municipal and industrial sludge from vessels transporting these wastes on state waters. The regulation contains specific container standards that must be met to transport these wastes. These requirements are continued to be needed to protect the environment from spills of these wastes that may occur during the transportation of these wastes. No comments were received during the public comment period for this periodic review. Due to the testing requirements for containers, the regulation is very specific concerning standards containers must meet prior to transportation of wastes on state waters. The standards included in the regulation make the regulation appear to be complex and technical; however, the regulated community is accustomed to implementing and using technical container standards in everyday practice. There are no applicable federal requirements for waste to be containerized to be transported on state waters.

The regulation was originally adopted in November of 2003. The regulation was amended in 2006, 2010, 2011, and 2012. The agency believes the regulation should not be amended or repealed to minimize the economic impact of the regulation on small businesses. The standards for transporting solid waste on Virginia waterways are necessary to protect Virginia waterways from the release of waste into state waters, and the regulation is consistent with the requirements of state law.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Fork Union Military Academy

An enforcement action has been proposed for the Fork Union Military Academy for violations at the Fork Union Military Academy sewage treatment plant in Fluvanna County, Virginia. The State Water Control Board proposes to issue a consent order to the Fork Union Military Academy to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality, office named below or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000,

Harrisonburg, Virginia, VA 22801, from November 12, 2018, to December 13, 2018.

Proposed Enforcement Action for Norfolk Southern Railway Company

An enforcement action has been proposed for Norfolk Southern Railway Company for violations of the State Water Control Law in Wise County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from November 13, 2018, through December 12, 2018.

Public Meeting and Public Comment for Total Maximum Daily Loads for the Blacks Run and Cooks Creek Watersheds

The Department of Environmental Quality (DEQ) will host a public meeting for the modification of total maximum daily loads (TMDLs) for the Blacks Run and Cooks Creek watersheds in Rockingham County, the Town of Bridgewater, and the City of Harrisonburg. The meeting will be held on November 28, 2018, at 1:30 p.m. at the Department of Environmental Quality, Valley Regional Office, 3000 Early Road, Harrisonburg, VA 22801.

Blacks Run and Cooks Creek were first listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria and the general standard (benthics) in 1998. The creeks have remained on the § 303(d) list for these impairments since then. A stressor analysis conducted by DEQ for both creeks indicated that sediment and phosphorous are the primary stressors responsible for the benthic impairment.

The impaired segment of Cooks Creek extends 13.32 miles from the headwaters downstream to its confluence with the North River. The impaired segment of Blacks Run extends 10.74 miles from its headwaters downstream to its confluence with Cooks Creek.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. DEQ completed sediment, phosphorous, and bacteria TMDLs for Cooks Creek and Blacks Run in April 2002. The TMDLs were approved by the U.S. Environmental Protection Agency in 2004. The TMDL reports are available on the DEQ website at http://www.deq.virginia.gov/programs/water/waterqualityinformationtmdls/tmdl/tmdldevelopment/approvedtmdlreports.aspx.

In order to address new and expanding discharges from permitted facilities in the watersheds since 2002, the TMDLs for these waterbodies required modification. This modification will ensure that discharge permits issued within the watersheds remain consistent with the wasteload allocations in the TMDLs. The modification process began in August of 2017. A public meeting was held on November 15, 2017, to present the draft TMDL study and initiate a 30-day public comment period on the modified study. Since this meeting, additional changes have been made to the TMDLs pertaining to the establishment of sediment and phosphorous wasteload allocations for industrial stormwater permitted facilities in the watersheds. The purpose of this public meeting is to share these modifications with the public and to initiate an additional public comment period on the revised wasteload allocations.

The public comment period will begin on November 29, 2018, and will end on December 28, 2018. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email nesha.mcrae@deq.virginia.gov.

For questions about the upcoming meeting or the project in general, please contact Nesha McRae at the phone number or email address listed above.

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

BOARD OF CORRECTIONS

Title of Regulation: **6VAC15-20. Regulations Governing Certification and Inspection.**

Publication: 23:22 VA.R. 3696-3703 July 9, 2007

Correction to Final Regulation:

Page 3703, 16VAC15-20-190 D, after "~~certification audits~~" delete "6 VAC 15-20-190" insert "6 VAC 15-20-100"

VA.R. Doc. No. R01-67; Filed October 17, 2018

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-211. Resource, Foster and Adoptive Family Home Approval Standards.**

Publication: 35:5 VA.R. 927-934 October 29, 2018

Correction to Agency Contact:

Page 927, Replace contact information to read: "Keisha Williams, Program Consultant, Department of Social Services, 801 Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 819-7173, or email k.williams@dss.virginia.gov."

VA.R. Doc. No. R13-3458; Filed October 29, 2018