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; Nicole Cheuk; Rita Davis; Leslie L. Lilley; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo; Mark J. Vucci.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

August 2019 through August 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
36:10	December 18, 2019	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12. 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020
36:18	April 8, 2020	April 27, 2020
36:19	April 22. 2020	May 11, 2020
36:20	May 6, 2020	May 25, 2020
36:21	May 20, 2020	June 8, 2020
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Agency Decision

Title of Regulation: **11VAC15-40. Charitable Gaming Regulations.**

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Name of Petitioner: Nathan A. Freels, Powerhouse Gaming.

Nature of Petitioner's Request: Petitioner requests that the Charitable Gaming Board amend Charitable Gaming Regulations to allow "for the calculation of Use of Proceeds be adjusted such that electronic pulltabs are calculated as 2% of the charitable gaming gross receipts specifically realized from the use of electronic pulltabs."

Agency Decision: Request denied.

Statement of Reason for Decision: The Charitable Gaming Board (board) voted to take no action on the petitioner's request for rulemaking for the following reason:

In 2018, the board created a workgroup to evaluate use of proceeds and to consider whether changes to the current structure are appropriate and necessary. It is premature for the board to interject itself into this evaluation until the workgroup has completed its work. Though the board voted to take no action on the petition, the workgroup will consider the specific idea brought forth in the petition for rulemaking as it deliberates over use of proceeds.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, or email michael.menefee@cdacs.virginia.gov.

VA.R. Doc. No. R19-26; Filed July 1, 2019, 5:56 p.m.

TITLE 24 TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

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

Name of Petitioner: Cynthia Ellen Hites.

Nature of Petitioner's Request: "I, Cynthia Ellen Hites, as a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-30-150 (VASAP Policy and Procedures Manual). Currently, the law states the following: Section 150, Paragraph A: 'Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender.' As of now, no penalty exists to the caseworker for breech of this law. With no adverse effect to the caseworker, or ASAP director, respectively, for failing to fulfill their duties, ASAP caseworkers can effectively operate with impunity regarding the time allotted them to notify [the] offender and court of noncompliance. There are no penalties established for the incidences of caseworker error or malfeasance that result in restart of [an] ignition interlock sentence, or force [the] offender to reappear in court to face further punishment. I propose the following language be adopted, in lieu of the current: 'A. Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender. If [the] caseworker fails to notify in writing both parties, within five working days, the instance of noncompliance shall not be considered, and the offender shall incur no penalty.'"

Agency Decision: Request denied.

Statement of Reason for Decision: During its June 7, 2019, meeting, the Commission on VASAP denied this petition, taking no action for the following reasons:

1) Failure of a case manager to report noncompliance promptly should not exonerate a client for violation of a probationary requirement; however, it might be considered in mitigation.

2) Whenever there is any malfeasance by a case manager, or a failure to otherwise perform required duties, any corrective or disciplinary action of the ASAP employee is a personnel matter best handled on a case-by-case basis to account for the specific circumstances.

3) ASAP case managers are not state employees. Thus, any employee consequences pertaining to job performance must be addressed by the local ASAP director and policy board and should not be included in state regulations.

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R19-25; Filed June 20, 2019, 4:55 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

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 Nursing intends to consider amending **18VAC90-19, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to initiate rulemaking in response to a petition for rulemaking from the Virginia Association of Clinical Nurse Specialists, which requested changes to regulations relating to registration of a clinical nurse specialist. The board intends to amend 18VAC90-19-210 to clarify that the board will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided the certification has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: August 21, 2019.

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

VA.R. Doc. No. R19-28; Filed July 1, 2019, 8:12 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider amending **22VAC30-60, Grants to Area Agencies on Aging**. The purpose of the proposed action is to update and clarify the chapter, which prescribes the requirements for a state-designated area agency on aging in Virginia to receive federal and state funds for various programs, including those for nutrition services, care coordination, legal assistance, and information and referral services.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: § 51.5-131 of the Code of Virginia; 42 USC § 3001 et seq.

Public Comment Deadline: August 21, 2019.

Agency Contact: Charlotte Arbogast, Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7063, FAX (804) 662-7663, TTY (800) 464-9950, or email charlotte.arbogast@dars.virginia.gov.

VA.R. Doc. No. R19-6060; Filed June 25, 2019, 10:00 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-115. Regulations for Determining Whether a Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals (adding 2VAC5-115-10, 2VAC5-115-20, 2VAC5-115-30).**

Statutory Authority: § 3.2-6501 of the Code of Virginia; Chapter 319 of the 2016 Acts of Assembly.

Effective Date: August 22, 2019.

Agency Contact: Dr. Kathryn MacDonald, Program Manager, Animal Care and Emergency Response, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 692-4001, FAX (804) 371-2380, or email kathryn.macdonald@vdacs.virginia.gov.

Summary:

Pursuant to Chapter 319 of the 2016 Acts of Assembly, which directed the Board of Agriculture and Consumer Services to promulgate a regulation to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals, the new chapter establishes provisions for making such a determination.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 115
REGULATIONS FOR DETERMINING WHETHER A FACILITY MEETS THE PURPOSE OF FINDING PERMANENT ADOPTIVE HOMES FOR ANIMALS

2VAC5-115-10. Definitions.

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

"Facility" means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain primary enclosures in which animals are housed or kept.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

"Releasing agency" means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

2VAC5-115-20. Meeting the purpose of finding permanent adoptive homes for animals.

A facility that is operated for the purpose of finding permanent adoptive homes for animals shall annually (i) find permanent adoptive homes for animals and (ii) conduct at least three of the following activities:

1. Be accessible to the public to view animals available for adoption;

2. Advertise to the general public animals that are available for adoption;

3. Transfer animals available for adoption to a releasing agency;

4. Utilize a foster care provider for animals temporarily awaiting placement in permanent adoptive homes; or

5. Offer services to the public in an effort to keep animals in their permanent homes.

2VAC5-115-30. Failure to meet requirements.

Failure to meet the requirements in this chapter will result in the State Veterinarian or the State Veterinarian's representative determining that the facility does not operate for the purpose of finding permanent adoptive homes for animals and is not a private animal shelter.

VA.R. Doc. No. R17-4927; Filed June 27, 2019, 4:40 p.m.

Forms

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

Titles of Regulations: **2VAC5-670. Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act.**

2VAC5-675. Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services.

2VAC5-680. Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act.

2VAC5-685. Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act.

Contact Information: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, or email liza.fleeson@vdacs.virginia.gov.

FORMS (2VAC5-670)

~~Application for New Pesticide Product Registration, VDACS-07208 (rev. 9/2014)~~

Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS-07208 (rev. 7/2019)

FORMS (2VAC5-675)

~~Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS-07208 (rev. 7/2017)~~

~~Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS-07209 (rev. 7/2017)~~

~~Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS-07210 (rev. 7/2017)~~

~~Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS-07211 (rev. 7/2017)~~

~~Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS-07212-A (rev. 7/2018)~~

~~Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination, VDACS-07212-B (eff. 7/2018)~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS-07218 (rev. 7/2017)~~

Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS-07208 (rev. 7/2019)

Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS-07209 (rev. 7/2019)

Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS-07210 (rev. 7/2019)

Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS-07211 (rev. 7/2019)

Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS-07212A (rev. 7/2019)

Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination, VDACS-07212B (rev. 7/2019)

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS-07218 (rev. 7/2019)

FORMS (2VAC5-680)

~~Application for Virginia Pesticide Business License, Form VDACS-07209 (rev. 9/06).~~

Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS-07209 (rev. 7/2019)

Certificate of Insurance, Form VDACS-07214 (rev. 4/96).

~~Request to take the Virginia Pesticide Business License Examination (rev. 1/09)~~

Request to take the Virginia Pesticide Business License Examination (rev. 7/2019)

FORMS (2VAC5-685)

~~Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 (rev. 9/2016)~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination – B, Form VDACS-07218 (rev. 9/2016)~~

Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 (rev. 7/2019)

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 (rev. 7/2019)

Commercial Pesticide Applicator Certification Exam bubble answer sheet, 2003

Private Pesticide Applicator Certification Exam bubble answer sheet, 2003

Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center (eff. 1/2009)

Power of Attorney (rev. 9/2016)

Proof of Additional Category Specific Training for Registered Technicians (rev. 8/2016)

~~Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 (rev. 9/2016)~~

~~Pesticide Registered Technician Application Form – RT-A, Form VDACS-07212-A (rev. 9/2016)~~

~~Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination – RT-B, Form VDACS-07212-B (eff. 9/2016)~~

Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 (rev. 7/2019)

Pesticide Registered Technician Application Form - RT-A, Form VDACS-07212-A (rev. 7/2019)

Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination – RT-B, Form VDACS-07212-B (rev. 7/2019)

VA.R. Doc. No. R19-6080; Filed July 11, 2019, 8:51 a.m.

◆ ◆

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-380. Watercraft: Motorboat Numbering (amending 4VAC15-380-110).**

Statutory Authority: §§ 29.1-701 and 29.1-710 of the Code of Virginia.

Public Hearing Information:

August 22, 2019 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: July 31, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The proposed amendment adds the definition of "tender vessel."

4VAC15-380-110. Lifeboats and tender vessels defined.

The term "lifeboat" as used in § 29.1-710 of the Code of Virginia shall mean a boat used exclusively as a lifesaving device during times of emergency.

The term "tender vessel" as authorized under § 29.1-710 of the Code of Virginia shall mean a vessel equipped with propulsion machinery of less than 10 horsepower that:

1. Is owned by the owner of a vessel for which a valid certificate of number has been issued;

2. Displays the number of the owner's vessel as prescribed in 4VAC15-380-30 followed by the suffix "1"; and

3. Is used as a tender for direct transportation between that vessel and the shore and for no other purpose.

VA.R. Doc. No. R19-6051; Filed June 27, 2019, 2:36 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-430. Watercraft: Safety Equipment Requirements (amending 4VAC15-430-20 through 4VAC15-430-50).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Hearing Information:

August 22, 2019 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: July 31, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The proposed amendments update requirements for personal flotation devices to align with federal regulations.

4VAC15-430-20. Definitions.

As used in this chapter the following words and terms shall have the following meanings:

"Coastal waters" means the territorial seas of the United States, and those waters directly connected to the territorial seas (i.e., bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds two nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to two miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

"Passenger" means every person carried on board a vessel other than:

1. The owner or his representative;

2. The operator;

3. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

4. Any guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

"Personal flotation device" or "PFD" means a device that is approved by the U.S. Coast Guard.

"Racing shell, rowing scull, racing canoe, and racing kayak" means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

"Recreational vessel" means any vessel being manufactured or operated primarily for pleasure, or leased, rented, or chartered to another for the latter's pleasure. It does not include any vessel engaged in the carrying of any passengers for consideration.

"Sailboard" means a sail-propelled vessel with no freeboard and equipped with a swivel-mounted mast not secured to a hull by guys or stays.

"Throwable PFD" means a PFD that is intended to be thrown to a person in the water. A PFD marked as Type IV or Type V with Type IV performance is considered a throwable PFD unless specifically marked otherwise. A wearable PFD is not a throwable PFD.

"Use" means operate, navigate, or employ.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, but does not include surfboards, tubes, swimming rafts, inflatable toys and similar devices routinely used as water toys or swimming aids.

"Visual distress signal" means a device that is approved by the U.S. Coast Guard or certified by the manufacturer.

"Wearable PFD" means a PFD that is intended to be worn or otherwise attached to the body. A PFD marked as Type I, Type II, Type III, or Type V with Type I, II, or III performance is considered a wearable PFD.

4VAC15-430-30. Personal flotation devices required.

A. Except as provided in 4VAC15-430-40, it shall be unlawful to use a recreational vessel unless ~~at least one PFD of the following types is on board for each person~~:

1. ~~Type I PFD~~ At least one wearable PFD is on board for each person;

2. ~~Type II PFD~~ Each PFD is used in accordance with any requirements on the approval label; ~~or~~ and

3. ~~Type III PFD~~ Each PFD is used in accordance with any requirements in its owner's manual if the approval label makes reference to such a manual.

B. Except as provided in 4VAC15-430-40, it shall be unlawful to use a recreational vessel of 16 feet or greater unless one ~~Type IV~~ throwable PFD is on board in addition to the total number of PFDs required in subsection A of this section.

C. Notwithstanding the provisions of § 29.1-742 of the Code of Virginia, it shall be unlawful to operate a personal watercraft unless each person riding on the personal watercraft or being towed by it is wearing a ~~Type I, Type II, Type III or Type V PFD~~ wearable PFD that is approved for such activity.

4VAC15-430-40. Personal flotation device exemptions.

~~A. A Type V PFD may be used in lieu of any PFD required under 4VAC15-430-30, provided:~~

~~1. The approval label on the Type V PFD indicates that the device is approved:~~

~~a. For the activity in which the vessel is being used; or~~

~~b. As a substitute for a PFD of the type required on the vessel in use;~~

~~2. The PFD is used in accordance with any requirements on the approval label;~~

~~3. The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual; and~~

~~4. The PFD is being worn.~~

~~B.~~ A. The following vessels are ~~exempted from the requirements for carriage of the additional Type IV~~ not required to carry an additional throwable PFD ~~required by 4VAC15-430-30~~.

1. Personal watercraft.

2. Nonmotorized canoes and kayaks 16 feet in length and over.

~~3. Racing shells, rowing sculls, racing canoes, and racing kayaks.~~

~~4. Sailboards.~~

~~5. Vessels of the United States used by foreign competitors while practicing for or racing in competition.~~

B. The following vessels are not required to carry any PFD:

1. Racing shells, rowing sculls, racing canoes, and racing kayaks while participating in or preparing and practicing for a race.

2. Sailboards.

C. Vessels of the United States used by foreign competitors while practicing for or racing in competition are not required to carry any PFD, provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor onboard.

4VAC15-430-50. Personal flotation device stowage.

A. It shall be unlawful to use a recreational vessel unless each ~~Type I, II, or III~~ wearable PFD required by 4VAC15-430-30, or equivalent type allowed by 4VAC15-430-40, is readily accessible. "Readily accessible" means that PFDs are stowed where they can be easily reached, or are out in the open ready for wear. A readily accessible PFD cannot be in a protective covering or under lock and key.

B. It shall be unlawful to use a recreational vessel unless each ~~Type IV~~ throwable PFD required by 4VAC15-430-30 of this chapter is immediately available. "Immediately available" means the PFD shall be quickly reachable in an emergency situation. An immediately available PFD cannot be in a protective covering, in a closed compartment or under other equipment.

VA.R. Doc. No. R19-6052; Filed June 27, 2019, 2:45 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

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

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18, 9VAC20-60-70, 9VAC20-60-260, 9VAC20-60-261, 9VAC20-60-264, 9VAC20-60-265, 9VAC20-60-266, 9VAC20-60-328, 9VAC20-60-1390, 9VAC20-60-1430, 9VAC20-60-1505).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Effective Date: August 23, 2019.

Agency Contact: Lisa A. Ellis, Coordinator, Hazardous Waste Compliance Program, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4237, or email lisa.ellis@deq.virginia.gov.

Summary:

The amendments incorporate the 2018 amendments to Title 40 of the Code of Federal Regulations into the regulation, not including the provisions of the Environmental Protection Agency's (EPA) Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule (83 FR 24664). The amendments also incorporate EPA rules promulgated after July 1, 2018: (i) Safe Management of Recalled Air Bags (83 FR 61552) and (ii) Management of Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (84 FR 5816).

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

A. Except as noted, when a regulation of the United States Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated ~~herein~~ into this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2017, update~~ 2018 annual edition; however, the incorporation by reference of Title 40 of the Code of Federal Regulations shall not include the requirements of EPA's Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule (83 FR 24664, May 30, 2018).

B. The references and incorporation of Title 40 of the Code of Federal Regulations into this chapter also includes the following rules promulgated by the United States Environmental Protection Agency after publication of the July 1, 2018, annual edition of Title 40 of the Code of Federal Regulations:

1. Safe Management of Recalled Air Bags (83 FR 61552, November 30, 2018); and

2. Management of Hazardous Waste Pharmaceuticals Rule and Amendment to the P075 Listing for Nicotine (84 FR 5816, February 22, 2019).

9VAC20-60-70. Public participation.

A. All regulations developed under the provisions of Title 10.1 of the Code of Virginia for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, ~~9VAC20-10~~ 9VAC20-11.

B. Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with 9VAC20-60-270.

C. Modifications and revisions to this chapter shall be the subject of public participation as specified by the Virginia Administrative Process Act and the public participation guidelines of the board.

D. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), and the provisions of this chapter.

E. All reports and related materials received from hazardous waste generators, transporters, and facilities, as required by this chapter, shall be open to the public for review.

F. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:

1. Investigate and provide written responses to all citizen complaints addressed to the department;

2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and

3. Publish a notice in major daily or weekly newspaper of general circulation in the area and provide at least 30 days of public comment on proposed settlements of civil enforcement actions except where the settlement requires some immediate action.

9VAC20-60-260. Adoption of 40 CFR Part 260 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "contained" shall be appended by adding the following: (5) Hazardous secondary materials managed under the exclusion provided in 40 CFR 261.4(a)(23) or (a)(24) shall not be managed in a land-based unit unless the land-based unit meets the applicable standards of 40 CFR Parts 260 through 270, as incorporated by reference, for management of hazardous waste.

3. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

4. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commenced after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

5. In 40 CFR 260.10, the term "Regional Administrator" shall mean the Regional Administrator of Region III of the United States Environmental Protection Agency or his designee.

6. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

7. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

8. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

9. In Part XIV (9VAC20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain provisions analogous to 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.34, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21, 40 CFR 260.22, and 40 CFR 260.23 are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

11. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

12. In the 40 CFR 260.10 definitions of the terms "AES filing compliance date," and "Electronic import-export reporting compliance date," the term "EPA" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Department of Environmental Quality."

13. In 40 CFR 260.4(a)(4) and 40 CFR 260.5(b)(2), the term "EPA" shall be retained and shall mean the United States Environmental Protection Agency. The term "EPA" shall not be supplanted with "Department of Environmental Quality" as instructed in 9VAC20-60-14 B 2.

14. The United States Environmental Protection Agency's amendments to 40 CFR 260 by the Response to Vacatur of Certain Provisions of the Definition of Solid Waste rule (83 FR 24664, May 30, 2018) shall not be included in the incorporation by reference of 40 CFR 260 and are not part of this chapter, 9VAC20-60; therefore, the incorporation of 40 CFR 260 is modified as follows:

a. Retain 40 CFR 260.42 as it appears in EPA's Definition of Solid Waste rule (80 FR 1694, January 13, 2015).

b. Retain 40 CFR 260.43 as it appears in EPA's Definition of Solid Waste rule (80 FR 1694, January 13, 2015).

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into ~~these regulations~~ this chapter:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at ~~the address shown~~ Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and to the Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the Regional Administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. Reserved.

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of

universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed here, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, in accordance with the terms and requirements described."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

8. For the purpose of this chapter, any solid waste is a hazardous waste if it is defined to be hazardous waste under the laws or regulations of the state in which it first became a solid waste.

9. In 40 CFR 261.6(c)(1) and 40 CFR 261.6(c)(2) mercury-containing lamp recycling facilities must also comply with all applicable requirements of 9VAC20-60-264 B 34 and 9VAC20-60-265 B 21.

10. In Subpart E of 40 CFR Part 261, the term "EPA" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Department of Environmental Quality."

11. In 40 CFR 261.2(a), reference to 40 CFR 260.30, 40 CFR 260.31, and 40 CFR 260.34 are replaced by analogous provisions of Part XIV (9VAC20-60-1370 et seq.) of this chapter.

12. In 40 CFR 261.3(a)(2), reference to exclusion under 40 CFR 260.20 and 40 CFR 260.22 are not incorporated by reference.

13. In 40 CFR 261.21(f)(6)(i), the term "EPA" shall be retained and shall mean the United States Environmental Protection Agency. The term "EPA" shall not be supplanted with "Department of Environmental Quality" as instructed in 9VAC20-60-14 B 2.

14. The United States Environmental Protection Agency's (EPA's) amendments to 40 CFR 261 by the Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule (83 FR 24664, May 30, 2018) shall not be included in the incorporation by reference of 40 CFR 261 and are not part of this chapter, 9VAC20-60; therefore, the incorporation of 40 CFR 261 is modified as follows:

a. Retain 40 CFR 261.4(a)(23) as it appears in EPA's Definition of Solid Waste rule (80 FR 1694, January 13, 2015).

b. Retain 40 CFR 261.4(a)(24) as it appears in EPA's Definition of Solid Waste rule (80 FR 1694, January 13, 2015).

c. Reserve 40 CFR 261.4(a)(25) as it appears in EPA's Definition of Solid Waste rule (80 FR 1694, January 13, 2015).

9VAC20-60-264. Adoption of 40 CFR Part 264 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(l), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed here, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, in accordance with the terms and requirements described."

3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the Regional Administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center, and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 264.56(i), the owner or operator shall

include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

6. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

7. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or."

8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director.

9. In 40 CFR 264.143(b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety company issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b), and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to § 38.2-2416 of the Code of Virginia.

11. Where in 40 CFR 264.143(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

12. The following text shall be substituted for 40 CFR 264.143(d)(8): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit."

13. The following text shall be substituted for 40 CFR 264.143(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii), and 40 CFR 264.147(f)(3)(ii): "A copy of the owner's or operator's audited financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and"

15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in 40 CFR 264.143(f)(1)(ii)(A).

16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism."

17. In addition to the requirements of 40 CFR 264.144, "the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."

18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with 40 CFR 264.145. For

owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor."

19. The following text shall be substituted for 40 CFR 264.144(c): "During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 264.144(b)."

20. Where in 40 CFR 264.145(c)(5) the phrase "final administrative determination pursuant to section 3008 of RCRA" appears, it shall be replaced with "final determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia."

21. The following text shall be substituted for 40 CFR 264.145(d)(9): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit."

22. The following text shall be substituted for 40 CFR 264.145(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

23. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

24. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

25. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

26. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

28. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after

September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

29. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

30. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

31. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source (a source located outside of the United States of America) shall notify the department and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in this section and 9VAC20-60-270. An owner or operator's failure to notify the new owner or operator of the requirements in this section and 9VAC20-60-270 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility that poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the department and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

32. In 40 CFR 264.71, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency, and the reference to "system" means the United States Environmental Protection Agency's national electronic manifest system.

33. ~~Regardless of the provisions of 9VAC20-60-18, the requirements of 40 CFR 264.71(j) are~~ Subpart FF of 40 CFR Part 264 shall not be incorporated into this chapter.

34. Requirements for mercury-containing lamp recycling facilities. The following requirements apply to all facilities that recover or reclaim mercury from lamps.

a. All owners and operators of mercury-containing lamp recycling facilities shall:

(1) Have established markets for the utilization of reclaimed materials and be able to identify these markets to the department;

(2) Only introduce into the processing equipment lamps or devices for which the equipment was specifically designed to process and operate and maintain processing equipment consistent with the equipment manufacturer's specifications; and

(3) Not speculatively accumulate the materials.

b. If a mercury-containing lamp recycling facility's processed materials are to be delivered to a facility other than a mercury reclamation facility, the owner or operator shall:

(1) Demonstrate proper equipment operation and efficiency by sampling and analytical testing of the processed materials. The testing shall ensure that such processed materials (i) have less than three parts per million of "average mercury" during each consecutive 12-week time period of operations ("average mercury" shall be calculated pursuant to subdivision 34 b (3) of this subsection); (ii) have less than five parts per million of total mercury as reported in the "weekly composite sample of process operations" ("weekly composite sample of process operations" shall be calculated pursuant to subdivision 34 b (3) of this subsection); (iii) are not a hazardous waste; and (iv) comply with 40 CFR Part 268, if applicable.

(2) Retest, reprocess, or deliver to a mercury reclamation facility processed materials that are in excess of the allowable levels of mercury specified in subdivision 34 b (1) of this subsection.

(3) Sample and perform analytical testing of the processed material for total mercury as follows:

(a) Facility operators shall take daily physical samples of the mercury-containing materials at the point at which they exit the processing equipment. These samples shall be representative of the materials processed during that day.

(b) At the beginning of each week, the prior week's daily samples shall be consolidated into one weekly sample, which shall be submitted for chemical analysis of total mercury content using an approved EPA methodology. At least three separate daily samples shall be taken in order to obtain a weekly sample. When a facility is not operating at least three days during a week, that week will be dropped out of the 12-week rolling average as calculated under subdivision 34 b (3) (c) of this subsection. However, all daily samples that are in a week that has been dropped out shall be counted towards the very next weekly sample that is included in a 12-week rolling average. The result of this analysis shall be considered the "weekly composite sample of process operations."

(c) The "average mercury" value calculation shall be the rolling average of weekly composite sample results from samples taken during the most recent 12-week time period with each new weekly composite sample result replacing the oldest sample result that was used in the previous 12-week period.

c. Mercury-containing lamp recycling facilities shall ensure that the separated materials that are generated from their operations are suitable and safe for their intended end use and shall bear the burden of responsibility for the safety of these materials sold or delivered from the operations. Facilities shall notify in writing receiving sources, other than mercury reclamation facilities, of the amount and type of hazardous substances present in the processed materials as demonstrated by laboratory analysis.

d. Operating requirements. Mercury-containing lamp recycling facilities shall be operated in accordance with the following requirements:

(1) Mercury-containing lamp recycling facilities shall control mercury emissions through the use of a single air handling system with redundant mercury controls and comply with the following:

(a) The owner or operator shall operate, monitor, and maintain an air handling system with redundant air pollution control equipment in order to reduce the mercury content of the air collected during the volume reduction and mercury recovery and reclamation processes.

(b) Redundant air pollution control equipment shall incorporate at least two carbon filters or equivalent technology arranged in a series so that the air passes through both filters before being released. In the event of a single filter failure, each filter shall be designed to ensure compliance with the risk-based protectiveness standards for mercury vapor provided in subdivision 34 e of this subsection.

(c) A sample of air shall be collected after the first carbon filter (or equivalent technology) and upstream of the second once each operating day while mercury-containing lamps or devices are being processed. The mercury content of the sample shall be determined for comparison with the risk-based protectiveness standards provided in subdivision 34 e of this subsection.

(d) The owner or operator shall operate, monitor, and maintain the air pollution control equipment in such a manner as not to exceed the risk-based protectiveness standards under subdivision 34 e of this subsection for mercury vapor downstream of the first carbon filter (or equivalent technology) and upstream of the second carbon filter.

(2) The area in which the processing equipment is located shall be fully enclosed and kept under negative pressure while processing mercury-containing lamps or devices.

e. Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment. Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided below or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection in accordance with subdivision 34 g of this subsection. The acute exposure protectiveness standard is 300 µg/m^3 for a 10-minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 µg/m^3. The following are risk-based protectiveness standards at a distance of five feet from the bulb crushing unit:

Monthly Bulb Crushing Duration (X Hours/Month)*	Chronic Exposure Air Emission Limit (µg/m^3)	Acute Exposure Air Emission Limit (µg/m^3)
X ≥ 32	1.314^{skin} µg/m^3	300 µg/m^3
8 < X < 32	6.317 ^{skin} µg/m^3	300 µg/m^3
X ≤ 8	27.375 ^{skin} µg/m^3	300 µg/m^3
*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.		

f. Closure. Mercury-containing lamp recycling facilities must prepare and maintain a closure plan conforming to the requirements of 40 CFR Part 264, Subpart G as adopted by reference in this section. Financial assurance shall be provided to the department in accordance with 40 CFR Part 264, Subpart H as adopted by reference in this section.

g. Recordkeeping requirements. The owner or operator of a mercury-containing lamp recycling facility shall maintain records of monitoring information that (i) specify the date, place, and time of measurement; (ii) provide the methodology used; and (iii) list the analytical results. The records maintained shall include all calibration and maintenance records of monitoring equipment. The owner or operator shall retain records of all monitoring data and supporting information available for department inspection for a period of at least three years from the date of collection.

35. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and

b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

9VAC20-60-265. Adoption of 40 CFR Part 265 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are parts of 40 CFR Part 265 are also hereby incorporated as parts of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed here, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, in accordance with the terms and requirements described."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the department, the administrator and the chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the Regional Administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center, and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 265.56(i), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ~~ground-water~~ groundwater monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the department.

8. The following text shall be substituted for 40 CFR 265.143(g) and 40 CFR 265.145(g): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure or post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the

sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date of January 12, 1987, is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;

b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;

d. Climate, including amount, frequency and pH of precipitation;

e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

a. Maintain the function and integrity of the final cover as specified in the approved closure plan;

b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;

c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;

d. Protect and maintain, if present, surveyed benchmarks; and

e. Restrict access to the landfill as appropriate for its post-closure use.

17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through

Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.

b. A permit application as required under 9VAC20-60-270 to address the post-closure care requirements of 40 CFR 264.117 and for ~~ground water~~ groundwater monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units that fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the ~~ground water~~ groundwater monitoring wells as well as the implementation of the applicable ~~ground water~~ groundwater monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ~~ground water~~ groundwater contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one-year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

19. In 40 CFR 265.71, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency, and the reference to "system" means the United States Environmental Protection Agency's national electronic manifest system.

20. ~~Regardless of the provisions of 9VAC20-60-18, the requirements of 40 CFR 265.71(j) are~~ Subpart FF of 40 CFR Part 265 shall not be incorporated into this chapter.

21. Requirements for mercury-containing lamp recycling facilities. The following requirements apply to all facilities that recover or reclaim mercury from lamps:

a. All owners and operators of mercury-containing lamp recycling facilities shall:

(1) Have established markets for the utilization of reclaimed materials and be able to identify these markets to the department;

(2) Only introduce into the processing equipment lamps or devices for which the equipment was specifically designed to process and operate and maintain processing equipment consistent with the equipment manufacturer's specifications; and

(3) Not speculatively accumulate the materials.

b. If a mercury-containing lamp recycling facility's processed materials are to be delivered to a facility other than a mercury reclamation facility, the owner or operator shall:

(1) Demonstrate proper equipment operation and efficiency by sampling and analytical testing of the processed materials. The testing shall ensure that such processed materials (i) have less than three parts per million of "average mercury" during each consecutive 12-week time period of operations ("average mercury" shall be calculated pursuant to subdivision 21 b (3) of this subsection); (ii) have less than five parts per million of total mercury as reported in the "weekly composite sample of process operations" ("weekly composite sample of process operations" shall be calculated pursuant to subdivision 21 b (3) of this subsection); (iii) are not a hazardous waste; and (iv) comply with 40 CFR Part 268, if applicable.

(2) Retest, reprocess, or deliver to a mercury reclamation facility processed materials that are in excess of the allowable levels of mercury specified in subdivision 21 b (1) of this subsection.

(3) Sample and perform analytical testing of the processed material for total mercury as follows:

(a) Facility operators shall take daily physical samples of the mercury-containing materials at the point at which they exit the processing equipment. These samples shall be representative of the materials processed during that day.

(b) At the beginning of each week, the prior week's daily samples shall be consolidated into one weekly sample that shall be submitted for chemical analysis of total mercury content using an approved EPA methodology. At least three separate daily samples shall be taken in order to obtain a weekly sample. When a facility is not operating at least three days during a week, that week will be dropped out of the 12-week rolling average as calculated under subdivision 21 b (3) (c) of this subsection. However, all daily samples that are in a week that has been dropped out shall be counted towards the very next weekly sample that is included in a 12-week rolling average. The result of this analysis shall be considered the "weekly composite sample of process operations."

(c) The "average mercury" value calculation shall be the rolling average of weekly composite sample results from samples taken during the most recent 12-week time period with each new weekly composite sample result replacing the oldest sample result that was used in the previous 12-week period.

c. Mercury-containing lamp recycling facilities shall ensure that the separated materials that are generated from their operations are suitable and safe for their intended end use and shall bear the burden of responsibility for the safety of these materials sold or delivered from the operations. Facilities shall notify in writing receiving sources, other than mercury reclamation facilities, of the amount and type of any hazardous substances present in the processed materials as demonstrated by laboratory analysis.

d. Operating requirements. Mercury-containing lamp recycling facilities shall be operated in accordance with the following requirements:

(1) Mercury-containing lamp recycling facilities shall control mercury emissions through the use of a single air handling system with redundant mercury controls and comply with the following:

(a) The owner or operator shall operate, monitor, and maintain an air handling system with redundant air pollution control equipment in order to reduce the mercury content of the air collected during the volume reduction and mercury recovery and reclamation processes.

(b) Redundant air pollution control equipment shall incorporate at least two carbon filters or equivalent technology arranged in a series so that the air passes through both filters before being released. In the event of a single filter failure, each filter shall be designed to ensure compliance with the risk-based protectiveness standards for mercury vapor provided in subdivision 21 e of this subsection.

(c) A sample of air shall be collected after the first carbon filter (or equivalent technology) and upstream of the second once each operating day while mercury-containing lamps or devices are being processed. The mercury content of the sample shall be determined for comparison with the risk-based protectiveness standards provided in subdivision 21 e of this subsection.

(d) The owner or operator shall operate, monitor, and maintain the air pollution control equipment in such a manner as not to exceed the risk-based protectiveness standards under subdivision 21 e of this subsection for mercury vapor downstream of the first carbon filter (or equivalent technology) and upstream of the second carbon filter.

(2) The area in which the processing equipment is located shall be fully enclosed and kept under negative pressure while processing mercury-containing lamps or devices.

e. Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment. Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided ~~below~~ in this subdivision or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection in accordance with subdivision 21 g of this subsection. The acute exposure protectiveness standard is 300 µg/m^3 for a 10-minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 µg/m^3. The following are risk-based protectiveness standards at a distance of five feet from the bulb crushing unit:

Monthly Bulb Crushing Duration (X Hours/Month)*	Chronic Exposure Air Emission Limit (µg/m^3)	Acute Exposure Air Emission Limit (µg/m^3)
X ≥ 32	1.314^{skin} µg/m^3	300 µg/m^3

8 < X < 32	6.317 skin µg/m³	300 µg/m³
X ≤ 8	27.375 skin µg/m³	300 µg/m³
*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.		

f. Closure. Mercury-containing lamp recycling facilities must prepare and maintain a closure plan conforming to the requirements of 40 CFR Part 265, Subpart G as adopted by reference in this section. Financial assurance shall be provided to the department in accordance with 40 CFR Part 265, Subpart H as adopted by reference in this section.

g. Recordkeeping requirements. The owner or operator of a mercury-containing lamp recycling facility shall maintain records of monitoring information that (i) specify the date, place, and time of measurement; (ii) provide the methodology used; and (iii) list the analytical results. The records maintained shall include all calibration and maintenance records of monitoring equipment. The owner or operator shall retain records of all monitoring data and supporting information available for department inspection for a period of at least three years from the date of collection.

22. In 40 CFR 265.12, the term "EPA" shall mean the United States Environmental Protection Agency.

9VAC20-60-266. Adoption of 40 CFR Part 266 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 266 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 266 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 266 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV (9VAC20-60-305 et seq.), VII (9VAC20-60-420 et seq.), and XII (9VAC20-60-1260 et seq.) of these regulations if the materials are used in a manner constituting disposal.

2. In addition to the requirements of Subpart C of 40 CFR Part 266, those who generate or transport recyclable materials or those who own or operate facilities that use or store recyclable materials are also subject to applicable requirements of Parts IV, VII and XII of these regulations if the recyclable materials are for precious metals recovery.

3. In addition to the requirements of Subpart G of 40 CFR Part 266, those who store lead-acid batteries subject to 40 CFR 266.80(b) are also subject to the requirements of Parts IV, VII and XII of these regulations.

4. In 40 CFR Part 266, references to 49 CFR Parts 171 through 180 shall be as 49 CFR Parts 171 through 180 are incorporated by reference in 9VAC20-110-110.

5. In 40 CFR 266.506(b)(3)(i), reference to (i) 40 CFR Part 62, Subpart FFF shall be replaced by 40 CFR Part 62, Subpart VV, which incorporates Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40; and (ii) 40 CFR Part 60, Subpart Eb shall be as it is incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50.

6. In 40 CFR 266.506(b)(3)(ii), reference to (i) 40 CFR Part 62, Subpart JJJ shall be replaced by 40 CFR Part 62, Subpart VV, which incorporates Article 46 (9VAC5-40-6550 et seq.) of 9VAC5-40; and (ii) 40 CFR Part 60, Subpart AAAA shall be as it is incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50.

7. In 40 CFR 266.506(b)(3)(iii), reference to (i) 40 CFR Part 62, Subpart HHH is not applicable in the Commonwealth of Virginia as there are no affected facilities and a negative declaration was made in 40 CFR Part 62, Subpart VV; and (ii) 40 CFR Part 60, Subpart Ec shall be as Subpart Ec is incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50.

8. In 40 CFR 266.506(b)(3)(iv), reference to 40 CFR Part 62, Subpart III shall be replaced by 40 CFR Part 62, Subpart VV, which incorporates Article 45 (9VAC5-40-6250 et seq.) of 9VAC5-40; and (ii) 40 CFR Part 60, Subpart CCCC shall be as Subpart CCCC is incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50.

9. In 40 CFR 266.506(b)(3)(v), reference to 40 CFR Part 63, Subpart EEE shall be as Subpart EEE is incorporated by reference in Article 2 (9VAC5-60-90 et seq.) of 9VAC5-60.

9VAC20-60-328. EPA identification number.

A. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the administrator or the department.

B. A generator who has not received an EPA identification number may obtain one by applying to the department using

EPA Form 8700-12. Upon receiving a request, the department will assign an EPA identification number to the generator.

C. A generator shall not offer his hazardous waste to transporters or to facilities that have not received an EPA identification number.

D. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized hazardous waste management facility, the generator involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 that shall be completed and returned to the Department of Environmental Quality regional office within 10 calendar days. (Note: The department's website, ~~http://www.deq.state.va.us~~ http://www.deq.virginia.gov, or the receptionist at 804-698-4000, will provide information on how to contact the appropriate regional office.)

9VAC20-60-1390. Changes in classifications as a solid waste.

A. Variances.

1. Applicability.

a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I (9VAC20-60-12 et seq.) and III (9VAC20-60-124 et seq.) of this chapter). The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.

b. A person who generates wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.

c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or nonwaste determination or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the department containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision.

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9VAC20-60-1420 B, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).

b. Materials that are reclaimed and then reused within the original primary production process in which they were generated.

c. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

d. Hazardous secondary materials that are reclaimed in a continuous industrial process.

e. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

f. Hazardous secondary materials that are transferred for reclamation under 40 CFR 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under ~~an~~ a RCRA Part B permit or interim status standards.

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);

b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;

c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

d. The extent to which the material is handled to minimize loss; and

e. Other relevant factors.

2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

e. The location of the reclamation operation in relation to the production process;

f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

g. Whether the person who generates the material also reclaims it; and

h. Other relevant factors.

3. The director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed but must be reclaimed further before recovery is completed if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on whether all of the following decision criteria are satisfied:

a. Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

b. Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

c. Whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials that is used in subsequent production steps;

d. Whether there is a market for the partially reclaimed material as demonstrated by known customer or customers who are further reclaiming the material (e.g., records of sales or contracts and evidence of subsequent use, such as bills of lading); and

e. Whether the partially reclaimed material is handled to minimize loss.

4. The director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under 40 CFR 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. The director's decision will be based on the following criteria:

a. The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to 40 CFR 260.43;

b. The reclamation facility or intermediate facility must satisfy the financial assurance condition in 40 CFR 261.4(a)(24)(vi)(F);

c. The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant noncomplier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

d. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR Part 261 Subpart M;

e. If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals, or present credible evidence that the residuals will be managed in a

manner that is protective of human health and the environment; and

f. The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include~~, but are not limited to,~~ potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.

5. An applicant may apply to the administrator for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste (i.e., nonwaste determination). The determinations will be based on the criteria contained in subdivision B 6 or B 7 of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (e.g., one of the solid waste variances under this section). Determinations may also be granted by the director if the state is either authorized for this provision or if the following conditions are met:

a. The director determines the hazardous secondary material meets the criteria in subdivision B 6 or B 7 of this section, as applicable;

b. The state requests that EPA review its determination; and

c. EPA approves the state determination.

6. The director may grant a nonwaste determination for hazardous secondary material that is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on the following criteria:

a. The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

b. Whether the capacity of the production process would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (e.g., based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

c. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

d. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 40 CFR 261.2 or 40 CFR 261.4.

7. The director may grant a nonwaste determination for hazardous secondary material that is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in 40 CFR 260.43 and on the following criteria:

a. Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (e.g., based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

b. Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

c. Whether the capacity of the market would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (e.g., based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

d. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

e. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under 40 CFR 261.2 or 40 CFR 261.4.

9VAC20-60-1430. Petitions to include additional hazardous wastes.

A. General.

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 9VAC20-60-273 and Part XVI (9VAC20-60-1495 et seq.) of this chapter may petition for a regulatory amendment under this part.

2. To be successful, the petitioner shall demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter:

a. Is appropriate for the waste or category of waste;

b. Will improve management practices for the waste or category of waste; and

c. Will improve implementation of the hazardous waste program.

The petition shall include the information required by 9VAC20-60-1370 C. The petition should also address as many of the factors listed in subsection B of this section as are appropriate for the waste or category of waste addressed in the petition.

3. The director will grant or deny a petition using the factors listed in subsection B of this section. The decision will be based on the weight of evidence showing that regulation under 9VAC20-60-273 and Part XVI of this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

4. The director may request additional information needed to evaluate the merits of the petition.

5. If the director adds new hazardous wastes to the list contained in 9VAC20-60-273 and in Part XVI of these regulations, management of these wastes under the universal waste regulations would only be allowed within the Commonwealth or other states that have added those particular wastes to their regulations. Shipments of such wastes to a state where universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements of Parts I through XV of this chapter.

B. Factors to consider.

1. The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of 40 CFR Part 261, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. (When a characteristic waste is added to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 9VAC20-60-273 and Part XVI of this chapter;

2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, ~~conditionally exempt~~ very small quantity generators, small businesses, government organizations, as well as large industrial facilities);

3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 9VAC20-60-273 or Part XVI of this chapter; and applicable requirements of the ~~Virginia~~ Regulations Governing the Transportation of Hazardous Materials, ~~9VAC20-110-10 et seq.)~~ 9VAC20-110) would be protective of human health and the environment during accumulation and transport;

6. Regulation of the waste or category of waste under 9VAC20-60-273 will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with the Virginia Hazardous Waste Management Regulations;

7. Regulation of the waste or category of waste under 9VAC20-60-273 will improve implementation of and compliance with the hazardous waste regulatory program; and

8. Such other factors as may be appropriate.

9VAC20-60-1505. Additional universal wastes.

A. The Commonwealth of Virginia incorporates at 9VAC20-60-273 A all universal wastes adopted by the federal government at 40 CFR Part 273. In addition to the universal wastes listed in 40 CFR Part 273, the universal wastes listed in this section are also universal wastes in Virginia if the requirements as provided in this section for each particular universal waste are met.

B. Mercury-containing lamps may be crushed for size reduction provided the requirements of this subsection are met.

1. Mercury-containing lamps are crushed under the control of the generator as defined in subdivision 4 of this subsection, and the crushed lamps are sent off site for recycling.

2. The use of mobile crushing units is prohibited. Mobile crushing units include any device or equipment or combination of devices and equipment that is designed to be transported and operated at more than one site.

3. Mercury-containing lamps that are crushed for size reduction by a generator or under the control of the generator as defined in subdivision 4 of this subsection may be managed under the provisions for universal wastes, 9VAC20-60-273, if the owner or operator complies with all the requirements and qualifications of this section.

4. "Under the control of the generator" means:

a. That the mercury-containing lamps are generated and crushed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the universal waste (UW) lamp generator); or

b. That the mercury-containing lamps are generated and crushed at different facilities if the crushing facility is controlled by the generator or if both the generating facility and the crushing facility are controlled by a person as defined in 40 CFR Part 260.10, and if the generator provides one of the following certifications: (i) "on behalf of [insert generator facility name], I certify that this facility will send the indicated UW lamps to [insert crushing facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the UW lamps" or (ii) "on behalf of [insert generator facility name] I certify that this facility will send the indicated UW lamps to [insert crushing facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the UW lamps." For purposes of this certification, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in 40 CFR Part 260.10 shall not be deemed to "control" such facilities. The certification shall be submitted to the department in accordance with subdivision 7 (h) of this subsection.

5. Mercury-containing lamp crushing operations that do not meet the definition of "under the control of the generator" in subdivision 4 of this subsection are subject to all applicable requirements for destination facilities in 40 CFR Part 273, Subpart E.

6. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

7. Crushing, handling, and storing mercury-containing lamps shall occur in a safe and controlled manner that minimizes the release of mercury to the environment. Requirements for a safe and controlled manner shall include the following:

a. Mercury-containing lamps shall be crushed in a mechanical unit specifically designed to crush mercury-containing lamps. This unit shall be hermetically sealed, except for air intakes, and under negative pressure. Air intake points must be closed when the unit is not operating.

b. Crushing operations shall occur in a space with its ambient air isolated from other work areas where persons who are not involved in the crushing operation may work. The ambient air from rooms containing crushing operations shall be discharged after filtration directly to an area outside the building where persons are unlikely to be directly exposed. If a situation exists at a particular facility in which the facility determines that discharge of ambient air from a room containing a crushing operation to the outside is technically or financially impracticable, the department may approve an alternated design that allows the discharge of ambient air from a room containing a crushing operation to another internal building space or centralized air circulation system if:

(1) The ambient air is discharged to the internal building space or centralized air circulation system through filtration system capable of capturing both particulate and vapor phase mercury.

(2) The filtration system is maintained as recommended by the manufacturer to ensure that it operates at its design mercury removal efficiency.

(3) Maintenance of the filtration system shall be documented and records of maintenance shall be kept on site.

c. Mercury-containing lamps shall be crushed with a device that is equipped with air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls shall include a HEPA filter, a sorption column of sulfur impregnated activated carbon media, and a negative air flow (vacuum) throughout the unit. The crushing unit shall have documentation from the manufacturer that demonstrates that the unit is equipped as required and:

(1) Achieves a particle retention rate of 99.97% in the HEPA filter (at a particle diameter less than 0.3 microns); and

(2) Achieves the air emission limits specified in the risk-based protectiveness standards table of subdivision 7 n (2) of this subsection.

d. Mercury-containing lamps shall be crushed indoors.

e. The transfer of crushed mercury-containing lamps in drums or containers to other drums or containers is not permitted.

f. Crushed mercury-containing lamps shall be stored in closed and hermetically sealed, nonleaking drums or containers that are in good condition (e.g., no severe rusting, no apparent structural defects, and no leaking).

g. Drums or containers used for storage of crushed mercury-containing lamps shall be properly sealed and labeled. The label shall bear the words "universal waste-lamps," "waste lamps," or "used lamps."

h. The generator or facility under the control of the generator shall make written notification to the department of the physical location of the crushing operation no later than January 31, 2017, for all existing operations or 30 calendar days prior to beginning operation of a new crushing operation. The notification shall include the name of the individual or company that owns the operation; the EPA ID number if one has been issued for the facility; the location of the crushing operation; and the names, addresses, and telephone numbers of the operator and principal contact person or persons. A written notice of changes in the notification data shall be sent to the department within 15 calendar days of the change. The notification shall include the certification required under subdivision 4 (b) of this subsection if applicable.

i. A written procedure specifying how to safely crush, handle, and store mercury-containing lamps and how to minimize the release of mercury, including during drum changes and malfunctions, shall be developed, implemented, and documented. This procedure shall include (i) the type of equipment to be used to crush mercury-containing lamps safely, (ii) instructions for proper equipment operation and a schedule for maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, (iii) proper waste management practices, and (iv) the use of personal protective equipment to include at a minimum safety glasses or full face shield and cut-proof gloves. The maintenance schedule shall identify all maintenance operations and the frequency with which they must be performed, including replacement of particle filters and the activated carbon media as recommended by the manufacturer of the crushing unit.

j. Maintenance activities shall be documented and records of maintenance shall be maintained and available for inspection per subdivision 8 of this subsection.

k. Each unit operator shall receive initial and annual training in crushing procedures, waste handling, safety, use of personal protective equipment, and emergency procedures, including proper procedures for cleaning up broken mercury-containing lamps. All training shall be documented and records of training shall be maintained and available for inspection per subdivision 8 of this subsection.

l. Residues, filter media, used equipment, other mercury-containing equipment, and other solid waste shall not be placed in the container with the crushed mercury-containing lamps. Any waste materials generated as part of the crushing operation that are determined to be hazardous waste shall be managed under this chapter, as hazardous waste or if not hazardous waste, as a solid waste under the Solid Waste Management Regulations, 9VAC20-81.

m. Any spills of the contents of the mercury-containing lamps that may occur shall be cleaned up in accordance with 40 CFR Part 273.13(d)(2) or 40 CFR Part 273.33(d)(2).

n. All generators or facilities under the control of the generator that crush mercury-containing lamps, except those generators or facilities that crush two hours or less and no more than 220 pounds/100 kilograms ~~(CESQG~~ (VSQG equivalent) of bulbs per month, shall provide monitoring as follows:

(1) Ambient air within the lamp crushing room and exhaust air from the lamp crushing unit shall be tested for mercury during the first month of using the lamp crushing unit and whenever the unit is modified or replaced, and annually thereafter. In addition, all connection points for hoses circulating air from within the unit, the seal between the unit and the drum, and openings in the crushing unit (e.g., the lamp feed tube) shall also be tested for mercury release during the first month of lamp crushing operation and annually thereafter. Routine maintenance of the machine does not constitute modified or replaced for purposes of requiring ambient air testing. Ambient air shall be tested within five feet of the lamp crushing device. Exhaust air and other tests shall be performed within two inches of the designated testing points on the lamp crushing device. All mercury testing required by this section shall be performed at a time when the lamp crushing device is being used to crush mercury-containing lamps.

(2) Testing for mercury releases from lamp crushing units shall be performed using a mercury vapor analyzer that has been approved for the application by the U.S. Occupational Safety and Health Administration or the Virginia Department of Labor and Industry, or a comparable device that has been calibrated by the manufacturer or laboratory providing the equipment.

Mercury vapor monitors used for testing must be capable of detecting mercury at the applicable concentrations provided below or lower in air and must be equipped with a data recording device to provide a record of measurements taken. Mercury monitoring data shall be documented and available for inspection per subdivision 8 of this subsection. The acute exposure protectiveness standard is 300 µg/m^3 for a 10-minute exposure with the understanding that the acute exposure protectiveness standard is considered a ceiling value and at no time during bulb crushing operation will the air concentrations of mercury exceed 300 µg/m^3. Alternately, compliance with the acute exposure protectiveness standard may be demonstrated by comparing the 95% upper confidence level of the mean of the individual data points to the standard. The following are risk-based protectiveness standards at a distance of five feet from the bulb crushing unit:

Monthly Bulb Crushing Duration (X Hours/Month)*	Chronic Exposure Air Emission Limit (µg/m^3)	Acute Exposure Air Emission Limit (µg/m^3)
X ≥ 32	1.314^{skin} µg/m^3	300 µg/m^3
8 < X < 32	6.317 ^{skin} µg/m^3	300 µg/m^3
X ≤ 8	27.375 ^{skin} µg/m^3	300µg/m^3
X ≤ 2 and no more than 220 lbs/month or 100 kg/month of bulbs crushed	Monitoring not required	Monitoring not required
*Monthly crushing duration is determined based on the maximum number of hours that bulb crushing occurred in any one month over the last 12-month period.		

(3) Any lamp crushing device that, when tested as described in subdivisions 7 n (1) and 7 n (2) of this subsection, fails to meet the criteria specified in subdivision 7 n (2) of this subsection, must immediately be removed from service. Lamp crushing devices removed from service under this subdivision may not be returned to service until the device has been inspected and repaired, and in subsequent testing has been shown to meet the specified criteria. Test data and documentation of repairs shall be kept in the facility record and available for inspection per subdivision 8 of this subsection.

(4) The facility shall document the amount of time spent crushing lamps and this information shall be maintained in the facility record and available for inspection per subdivision 8 of this subsection.

8. A copy of all records, notifications, certifications, and reports required by this section shall be kept on site and be available for examination by the department for a period of at least three years.

9. All requirements of this section shall be immediately effective for all new facilities beginning operations on or after January 1, 2017. All requirements of this section shall be effective for all existing facilities no later than April 1, 2017.

VA.R. Doc. No. R19-5986; Filed June 26, 2019, 1:44 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9VAC20-70-210, 9VAC20-70-290).**

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia; §§ 1008(a)(3), 2002, and 4004(a) of the Resource Conservation and Recovery Act; 40 CFR Part 258.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 21, 2019.

Effective Date: September 5, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Section 10.1-1410 of the Code of Virginia authorizes the board to promulgate regulations that ensure that if a solid waste treatment, transfer, or disposal facility is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

Purpose: This amendment removes language that is no longer applicable. Removing the obsolete language will avoid confusion concerning the requirements applicable to local governments using the local government financial test. The amendments protect public health, safety and welfare by

providing clarity to local governments required to provide financial assurance for their activities.

Rationale for Using Fast-Track Rulemaking Process: This action makes technical corrections. A previous amendment to this regulation removed requirements for local governments to provide additional financial assurance if their closure cost obligations are between 20% and 43% of their total annual revenue. The amendments remove obsolete language pertaining to the removal of the requirement for additional financial assurance to be provided when the locality's closure cost obligations are between 20% and 43% of their total annual revenue. The amendments do not change any financial assurance requirements for local governments and avoid confusion concerning the applicable regulatory requirements.

This regulatory action is expected to be noncontroversial since it deletes obsolete language. It does not change any requirements of the local government financial test. An informal public comment period was held on the proposed changes and no comments were received on the changes.

Substance: Corrections are being made to remove obsolete language related to the local government financial test that is no longer applicable. The amendments do not change any requirements of the local government financial test.

Issues: The primary advantage of this action is the removal of obsolete language, which makes the requirements related to the local government financial test easier to understand. This change benefits the regulated community and the agency. There are no disadvantages to the public, agency, Commonwealth, or regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to eliminate obsolete language.

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

Estimated Economic Impact. The purpose of this regulation is to assure that owners and operators of permitted or unpermitted waste management facilities are financially responsible for the closure, post-closure care and corrective action at their facilities. The regulation establishes standards and procedures for financial assurance to be used in the issuance and continuation of permits to construct, operate, modify, close, or provide post-closure care and to be used in the performance of corrective actions or in formulation of enforcement documents issued by the Department of Environmental Quality.

Eliminating obsolete language would have no impact on requirements in practice but would be beneficial in that clarity for readers of the regulation would be improved.

Businesses and Entities Affected. As the proposed amendments do not change any requirements in practice and only improve the clarity of the requirements, it is readers of the regulation that are particularly affected.

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

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

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

Real Estate Development Costs. The revised proposed amendments do not significantly 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 significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]Adverse impact is indicated if there is any increase in cost for any entity, even if the benefits exceed the costs.

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments remove language pertaining to an obsolete requirement for additional financial assurance to be provided when a locality's closure cost obligations are between 20% and 43% of their total annual revenue. This action does not change any financial assurance requirements for local governments.

9VAC20-70-210. Local government financial test.

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate

financial assurance using the local government financial test up to the amount specified in subdivision 4 of this section.

1. Financial component.

a. The owner or operator shall satisfy the provisions of subdivision 1 a of this section, as applicable:

(1) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall supply the director with documentation demonstrating that the owner or operator has a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(2) If the owner or operator does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

(a) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(b) A ratio of annual debt service to total expenditures less than or equal to 0.20.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have ~~its~~ his financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator is not eligible to assure ~~its~~ his obligations under this section if he:

(1) Is currently in default on any outstanding general obligation bonds;

(2) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(3) Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; or

(4) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing ~~its~~ his financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure, post-closure care, or corrective action costs assured through the financial test into the next comprehensive annual financial report (CAFR) after January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with 9VAC20-81-260. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

3. Recordkeeping and reporting requirements.

a. The local government owner or operator must submit to the department the following items and place copies of the items in the facility's operating record:

(1) An original letter signed by the local government's chief financial officer worded as specified in 9VAC20-70-290 G;

(2) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(3) A report to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision 1 a (2) of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3), and 1 c (4) of this section. The CPA or state agency's report shall state the procedures performed and the CPA or state agency's findings;

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met; and

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund~~, escrow account~~ or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating

the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care costs if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9VAC20-70-290 H~~; and (6) If the local government is required under this section to fund a restricted sinking fund, escrow account, or to obtain an irrevocable letter of credit, an original letter signed by the local government's chief financial officer and worded as specified in 9VAC20-70-290 I must be submitted~~.

b. The items required in subdivision 3 a of this section shall be submitted to the department and placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later; or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 9VAC20-81-260.

c. After the initial submission of the items, the local government owner or operator must update the information, place a copy of the updated information in the operating record, and submit the updated documentation described in subdivisions 3 a (1) through (6) of this section to the department within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9VAC20-70-111 E, 9VAC20-70-112 B, or 9VAC20-70-113 C.

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place a copy of the financial assurance mechanism in the operating record, and submit the original financial assurance mechanism to the director.

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities.

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 9VAC25-590, ~~PCB~~ polychlorinated biphenyls storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations (9VAC20-60), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed 43% of the local government's total annual revenue.

c. The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

9VAC20-70-290. Wording of financial mechanisms.

A. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor,

requiring that the owner or operator of a (solid) (regulated medical) (yard) waste (transfer station) (receiving) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure, post-closure, corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust

fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United State government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9VAC20-70-290 A of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal) (Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

On this date, before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

B. Wording of surety bond guaranteeing performance or payment.

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation: _____

Surety: (name and business address) _____

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility: _____

Penal sum of bond: $_____

Surety's bond number: _____

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit or an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the order or the (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental

Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.2-302 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is identical to the wording specified in 9VAC20-70-290 B of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: $___

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Seal:

C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $____, available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No ____ together with

2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording specified in 9VAC20-70-290 C of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Attest:

(Print name and title of official of issuing institution) (Date)

(Signature) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," of "the Uniform Commercial Code.")

D. Assignment of certificate of deposit account.

City _____ _____, 20___

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

() If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, 9VAC20-70. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

_____ SEAL

(Owner)

_____

(print owner's name)

_____ SEAL

(Owner)

_____

(print owner's name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of $ _____ for the benefit of the Department of Environmental Quality.

() If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

_____ _____

(Signature) (Date)

_____

(print name)

_____

(Title)

E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

_____

_____

Name and Address of Insured (herein called the "Insured"):

_____

_____

_____

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: $ _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9VAC20-70-190 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations") (9VAC20-70), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 9VAC20-70-290 E of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director

Department of Environmental Quality

P.O. Box 1105

Richmond, Virginia 23218

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9VAC20-70-200 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9VAC25-590), above ground storage facilities (9VAC25-640) and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9VAC20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9VAC20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)	$_____
2) Tangible net worth*	$_____
3) Total assets located in the United States*	$_____

	YES	NO
Line 2 exceeds line 1 by at least $10 million?	_____	_____
Line 3 exceeds line 1 by at least $10 million?	_____	_____

(Fill in Alternative I if the criteria of 9VAC20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9VAC20-70-200 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of this firm's senior unsubordinated debt and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II

4) Total liabilities* (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.)	$_____
5) Net worth*	$_____

	YES	NO
Is line 4 divided by line 5 less than 1.5?		

ALTERNATIVE III

6) Total liabilities*	$_____
7) The sum of net income plus depreciation, depletion, and amortization minus $10 million*	$_____

	YES	NO
Is line 7 divided by line 6 less than 0.1?		

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 F of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

(Fill in Alternative I if the criteria in 9VAC20-70-210 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-210 1 a (2) are used.)

ALTERNATIVE I - BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

	YES	NO
5) Is (line 2a / line 3a) < 0.05?	____	____
6) Is (line 2b / line 3b) < 0.05?	____	____
7) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
~~8) Is (line 1 + line 4e) <= (line 3a x 0.20)?~~	~~____~~	~~____~~

~~If the answer to line 7 is yes and the answer to line 8 is no, please attach documentation from the agent/trustee /issuing institution stating the current balance of the account/fund /irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.~~

ALTERNATIVE II - FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

*5) Cash plus marketable securities $_____

*6) Total Expenditures $_____

*7) Annual Debt Service $_____

	YES	NO
8) Is (line 2a / line 3a) < 0.05?	____	____
9) Is (line 2b / line 3b) < 0.05?	____	____
10) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
11) Is (line 5 / line 6) >= 0.05?	____	____
~~12) Is (line 7 / line 6) <= 0.20?~~	____	____
~~13) Is (line 1 + line 4e) <= (line 3a x.20)~~	____	____

~~If the answer to line 13 is no, please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.~~

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 G of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

H. Certification of funding.

CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility Permit #	Source for funding closure and post closure

Name of Locality or Corporation:

_____

Signature	Printed Name	Date

Title

~~I. Certification of escrow/sinking fund /irrevocable letter of credit balance.~~

~~CERTIFICATION OF ESCROW/SINKING FUND BALANCE OR AMOUNT OF IRREVOCABLE LETTER OF CREDIT~~

~~I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the restricted sinking (type of fund) fund or the escrow account or the amount of the irrevocable letter of credit restricted to landfill closure costs is $_____~~

~~The calculation used to determine the amount required to be funded is as follows:~~

~~(Show the values that were used in the following formula:~~

~~(CE * CD) - E~~

~~Where CE is the current closure cost estimate, CD is the percentage of landfill capacity used to date, and E is current year expenses for closure.)~~

~~Therefore, this account has been funded or an irrevocable letter of credit has been obtained in accordance with the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9VAC20-70.~~

~~(Signature)~~

~~(Name of person signing)~~

~~(Title of person signing)~~

~~(Date)~~

~~J.~~ I. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-220 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans", "post-closure care plans" and "corrective action plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81), or the Regulated Medical Waste Management Regulations (9VAC20-120).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure, post-closure or corrective action plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure, post-

closure, or corrective action or any other modification or alteration of an obligation of the owner or operator pursuant to the (Solid Waste Management Regulations or Regulated Medical Waste Management Regulations or § 10.1-1454.1 of the Code of Virginia).

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9VAC20-70. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording in 9VAC20-70-290 ~~H~~I of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor)

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

~~K.~~ J. Wording of local government guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-230 of the Financial Assurance Regulations for Solid Waste Disposal, Treatment and Transfer Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia (Solid Waste Management or Regulated Medical Waste Management) Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of 9VAC20-70.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9VAC20-70-290 ~~K~~ J of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) _____

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

VA.R. Doc. No. R19-5480; Filed June 23, 2019, 11:56 a.m.

Forms

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

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

Contact Information: Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC20-90)

Solid Waste Information and Assessment Program - Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 11/2014)

~~Solid Waste Annual Permit Fee Quarter Payment Form PF001 (rev. 6/2018)~~

Solid Waste Annual Permit Fee Quarter Payment Form PF001 (rev. 6/2019)

VA.R. Doc. No. R19-6059; Filed July 1, 2019, 3:32 p.m.

Final Regulation

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

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 1809 through 1810; 49 CFR Parts 107, 170 through 180, 383, and 390 through 397.

Effective Date: August 21, 2019.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4019, or email debra.harris@deq.virginia.gov.

Summary:

The amendment updates the federal regulations from Title 49 of the Code of Federal Regulations that are incorporated by reference into Virginia's Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) to the latest version as published on October 1, 2018.

Part III
Compliance with Federal Regulations

9VAC20-110-110. Compliance.

A. Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation with amendments promulgated as of October 1, ~~2016~~ 2018, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.

2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.

3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.

4. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

5. Specifications for Packagings in 49 CFR Part 178.

6. Specifications for Tank Cars in 49 CFR Part 179.

7. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.

8. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

B. The references to and incorporation by reference of 49 CFR Part 390 into this chapter includes the compliance date extension as promulgated by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (83 FR 62505, December 4, 2018).

VA.R. Doc. No. R19-5539; Filed June 27, 2019, 8:41 p.m.

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-30; repealing 9VAC25-640-250).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 21, 2019.

Effective Date: September 5, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: The legal basis for the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) is the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Specifically, § 62.1-44.34:16 D of the Code of Virginia authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines to demonstrate financial responsibility for any pipelines operated within the Commonwealth.

Purpose: The amendment modifies the language in 9VAC25-640-30 to include the revisions made to the exclusions in 9VAC25-91-30 of the Facility and Aboveground Storage Tank (AST) Regulation. This will remove confusion concerning activities excluded from regulation. The amendments are necessary to protect the public health, safety, and welfare as they remove confusion concerning activities excluded from the regulation.

9VAC25-640-250, which is obsolete, is being repealed. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and the regulatory language is no longer needed or applicable.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendments are expected to be noncontroversial and therefore justify using the fast-track rulemaking process.

Substance: This amendment modifies the language in 9VAC25-640-30 to include the revisions made to the exclusions in 9VAC25-91-30 of the Facility and Aboveground Storage Tank (AST) Regulation. This will remove confusion concerning activities excluded from regulation.

9VAC25-640-250, which is obsolete is also being repealed.

Issues: The public, regulated community, and agency will all benefit from these changes. There are no disadvantages to the public, regulated community, or agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to incorporate the changes that occurred in a companion regulation.

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

Estimated Economic Impact. This regulation establishes financial assurance requirements for facilities and individual storage tanks that are subject to a companion regulation, the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The companion regulation contains the technical requirements for registration of facilities and individual ASTs among others. The Board recently excluded ASTs that are an integral part of an equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator) from registration.[1] In the same action, the Board also added an example to clarify that airport refueling trucks and mobile refueling vehicles are exempt from registration because they are examples of "licensed motor vehicles" that are already excluded from the regulation. In this action, the Board proposes to incorporate in this regulation the new exemption and the clarification of an existing exemption in the companion regulation.

The companion regulation determines whether a facility or an individual AST is subject to registration. Thus, when the companion regulation was amended to exempt certain equipment, the financial assurance requirements relating to those types of ASTs were automatically made obsolete. As a result, amending this regulation will have no economic impact other than improving the clarity of this regulation and consistency between this regulation and the companion regulation.

Businesses and Entities Affected. At the end of fiscal year 2017, there were 10,972 active registered ASTs in Virginia. These ASTs were located at 4,003 facilities within the state.

Localities Particularly Affected. The proposed amendments do not affect any particular locality more than others.

Projected Impact on Employment. The proposed amendments do not have any effect on employment.

Effects on the Use and Value of Private Property. The proposed amendments do not have any effect on the use and value of private property.

Real Estate Development Costs. No impact on real estate development costs is expected.

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. According to the Department of Environmental Quality, there are 2,030 facilities that only have one AST registered, which is an indication that the facility is likely a small business. The proposed changes do not affect costs for them, but will likely improve clarity of the regulation.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not have adverse effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not have adverse impacts on businesses.

Localities. The proposed amendments would not adversely affect localities.

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

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[1] http://townhall.virginia.gov/l/viewstage.cfm?stageid=6844

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments (i) revise the list of exclusions in 9VAC25-640 for consistency with the Facility and Aboveground Storage Tank Regulation (9VAC25-91-30), a companion regulation, and (ii) repeal an obsolete section regarding regular review of the regulation.

9VAC25-640-30. Exclusions.

The requirements of this chapter do not apply to:

1. Vessels;

2. Licensed motor vehicles, unless used solely for the storage of oil (e.g., airport refueling trucks and mobile refueling vehicles);

3. An AST with a storage capacity of 660 gallons or less of oil, except with regard to purposes of the requirements of 9VAC25-640-220;

4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);

5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);

6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;

7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC § 301 et seq.), except with regard to purposes of the requirements of 9VAC25-640-220;

8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.);

9. An AST that is used to store propane gas, butane gas, or other liquid petroleum gases;

10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

12. A surface impoundment, pit, pond, or lagoon;

13. A storm water or wastewater collection system;

14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST that forms an integral part (cannot be readily detached or removed) of the equipment or machinery and the contents of the AST are solely used by the attached equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator);

16. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and clean up of oil; (ii) used by a federal, state, or local entity in responding to an emergency; or (iii) used temporarily on site to replace permanent storage capacity, except with regard to purposes of the requirements of 9VAC25-640-220;

~~16.~~ 17. Oil-filled electrical equipment, including~~, but not limited to,~~ transformers, circuit breakers, or capacitors;

~~17.~~ 18. A flow-through process tank;

~~18.~~ 19. Oily water separators;

~~19.~~ 20. An AST containing dredge spoils;

~~20.~~ 21. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregated storage capacity of 1,100 gallons or less, except with regard to purposes of the requirements of 9VAC25-640-220;

~~21.~~ 22. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment;

~~22.~~ 23. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute);

~~23.~~ 24. Underground storage tanks regulated under a state program;

~~24.~~ 25. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored, except with regard to purposes of the requirements of 9VAC25-640-220.

9VAC25-640-250. ~~Evaluation of chapter.~~ (Repealed.)

~~A. By October 31, 2012, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives that would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

VA.R. Doc. No. R19-4744; Filed June 23, 2019, 12:10 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-120. Money Order Sellers and Money Transmitters (amending 10VAC5-120-10, 10VAC5-120-20, 10VAC5-120-40 through 10VAC5-120-70; adding 10VAC5-120-35).**

Statutory Authority: §§ 6.2-1913 and 12.1-13 of the Code of Virginia.

Effective Date: July 15, 2019.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

Summary:

The amendments implement Chapter 634 of the 2019 Acts of Assembly and require licensees to register with the Nationwide Multistate Licensing System and Registry (NMLS). Amendments (i) require current licensees to transition to NMLS and for other persons seeking a license under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia to apply through NMLS; (ii) require licensees to maintain current information in NMLS records; (iii) clarify that licenses must be renewed annually between November 1 and December 31; (iv) replace existing reporting requirements with a requirement that licensees file quarterly call reports through NMLS along with information concerning their financial condition; (v) establish the time period within which licensees must file audited financial statements required by § 6.2-1905 D of the Code of Virginia; (vi) provide that the authorized delegate information referenced in § 6.2-1917 B of the Code of Virginia must be submitted through the NMLS agent reporting functionality; (vii) specify that the annual assessment is calculated using the information reported by licensees in quarterly call reports or other written reports required by the Commissioner of Financial Institutions; (viii) provide that if the Bureau of Financial Institutions requests information from an applicant to complete a deficient application and the information is not received within 60 days of the request, the application is deemed abandoned unless an extension of time is requested and approved prior to the expiration of the 60-day period; and (ix) make other technical changes for consistency and clarity.

AT RICHMOND, JULY 1, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2019-00016

Ex Parte: In re: Money Order Sellers
and Money Transmitters

ORDER ADOPTING REGULATIONS

On May 21, 2019, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's regulations governing licensed money order sellers and money transmitters ("licensees"), which are set forth in Chapter 120 of Title 10 of the Virginia Administrative Code ("Chapter 120").

The proposed amendments to Chapter 120 were prompted by Chapter 634 of the 2019 Virginia Acts of Assembly, which became effective on July 1, 2019, and requires all licensees to register with the Nationwide Multistate Licensing System and Registry ("NMLS"). The proposal sets forth the requirements for current licensees to transition to NMLS and for other persons seeking a license under Chapter 19 of Title 6.2 of the Code of Virginia to submit their applications through NMLS. Additionally, the proposed regulations require licensees to maintain current information in their NMLS records and clarify that all licenses must be renewed annually between November 1 and December 31. The proposal also: (i) replaces the existing reporting requirements in subsections A and B of 10 VAC 5-120-40 with a requirement that licensees file quarterly call reports through NMLS along with information concerning their financial condition; (ii) prescribes the time period within which licensees must file the audited financial statements required by § 6.2-1905 D of the Code of Virginia; (iii) requires the authorized delegate information specified in § 6.2-1917 B of the Code of Virginia to be submitted through the agent reporting functionality in NMLS; (iv) specifies that the annual assessment will be calculated using the information reported by licensees in their quarterly call reports or other written reports that may be required by the Commissioner of Financial Institutions; and (v) provides that if the Bureau requests information from an applicant to complete a deficient application and such information is not received within 60 days of the Bureau's request, the application will be deemed abandoned unless an extension of time is requested and approved prior to the expiration of the 60-day period. Various technical and conforming amendments were also proposed.

The Order to Take Notice and proposed regulations were published in the Virginia Register of Regulations on June 10, 2019, posted on the Commission's website, and sent to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before June 21, 2019. No comments or requests for a hearing were filed.

NOW THE COMMISSION, having considered the proposed regulations, the record herein, and applicable law, concludes that the proposed regulations should be adopted as proposed with an effective date of July 15, 2019.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective July 15, 2019.

(2) This Order and the attached regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed, and the papers herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the attached regulations, to all licensed money order sellers and money transmitters, and such other interested parties as he may designate.

10VAC5-120-10. Definitions.

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

"Authorized delegate," "licensee," "monetary value," "money order," and "outstanding" shall have the meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 19" means Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

"Generally accepted accounting principles" for purposes of Chapter 19 and this chapter means standard accounting guidelines as established and administered by the American Institute of Certified Public Accountants (AICPA) and the United States Financial Accounting Standards Board (FASB).

"Merchant or service provider" means a person engaged in the business of selling goods or services, but excluding a person licensed or required to be licensed under Chapter 19.

"Money transmission" for purposes of Chapter 19 and this chapter shall have the meaning ascribed to it in § 6.2-1900 of the Code of Virginia. However, the term shall not include the actions of an agent who collects funds on behalf of a merchant or service provider, provided that (i) the agent has been explicitly designated in a written agreement as an agent of the merchant or service provider; (ii) any funds collected by the agent shall be deemed for all purposes to be received by the merchant or service provider, regardless of whether the agent actually remits such funds to the merchant or service provider; (iii) the agent provides the Virginia resident with a dated receipt indicating that payment to the agent constitutes payment to the merchant or service provider; and (iv) there is no risk of loss to the Virginia resident if the agent fails to remit such resident's funds to the merchant or service provider. This definition shall not be construed to prohibit the merchant or service provider from seeking indemnification from its agent for any direct losses incurred due to the agent's failure to remit funds in accordance with its agreement.

~~"Reporting period" means a calendar quarter, the first six months of a calendar year, or the last six months of a calendar year, as the case may be.~~

"Nationwide Multistate Licensing System and Registry" and "registry" shall have the meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Senior officer" for purposes of Chapter 19 means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including ~~but not limited to~~ its compliance with applicable laws and regulations.

10VAC5-120-20. Surety bond standards.

A. Every licensee shall be bonded in a principal amount determined by the Commissioner of Financial Institutions. The bond amount shall be equal to the licensee's Virginia average monthly money order sales during the preceding two ~~reporting periods~~ calendar quarters, or its Virginia average monthly money transmission volume during such periods, or both, as applicable, rounded to the next highest multiple of $10,000, but not exceeding $500,000. The commissioner, however, may increase the amount of bond required to a maximum of $1 million upon the basis of the impaired financial condition of a licensee, as evidenced by net worth reduction, financial losses, or other relevant criteria.

B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly money order sales and money transmission volume, experience, and other factors deemed pertinent.

C. The minimum bond required shall be $25,000.

D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be submitted prior to the issuance of a license~~,~~ and shall be maintained continuously thereafter as long as the licensee or former licensee has money orders outstanding or unfulfilled money transmission agreements.

10VAC5-120-35. Nationwide Multistate Licensing System and Registry.

A. Applications for a license under Chapter 19 shall be made through the registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the registry, on the commission's Internet website, or by any other means the commissioner deems appropriate.

B. Every licensee holding a license under Chapter 19 prior to July 1, 2019, shall register with the registry and file through the registry a transition request for its license under Chapter 19 no later than September 1, 2019.

C. Every licensee shall maintain current information in its records with the registry. Except as otherwise required by Chapter 19 or this chapter, a licensee shall update its information as soon as is practicable, but in no event later than 10 business days from when a change takes effect.

D. A license issued under Chapter 19 shall expire on December 31 of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. A license shall be renewed upon the commissioner finding that the licensee has satisfied the requirements set forth in subsection F of § 6.2-1905 of the Code of Virginia.

10VAC5-120-40. Reporting and filing requirements.

A. ~~1. Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of each calendar quarter.~~

~~2. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.~~

~~3. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees that acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.~~

Pursuant to subsection D of § 6.2-1905 of the Code of Virginia, every licensee shall file quarterly call reports through the registry as well as such other information pertaining to the licensee's financial condition as may be required by the registry. Reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require. Compliance with this subsection shall satisfy the requirement in subsection B of § 6.2-1917 of the Code of Virginia that a licensee file its quarterly financial statements with the commissioner.

B. ~~Licensees shall file a report of outstandings and permissible investments with the commissioner within 45 days after the end of each calendar quarter.~~

~~C.~~ Within one business day after a licensee becomes aware of the occurrence of any of the following events, the licensee shall file a written report with the commissioner describing the event:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's money order seller license, money transmitter license, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its money order sales, money transmission, or similar business; or (iii) takes any other action against the licensee relating to its money order sales, money transmission, or similar business where the total amount of restitution or other payment from the licensee exceeds $20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed money order sales, money transmission, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

5. The licensee surrenders its money order seller license, money transmitter license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.

6. The licensee is denied a money order seller license, money transmitter license, or other license for a similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, employees, or authorized delegates is indicted or convicted of a felony.

~~D.~~ C. The reports required by this section shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.

D. Every licensee shall file the audited financial statements required by subsection D of § 6.2-1905 of the Code of Virginia within 105 days of the end of its fiscal year. For example, if a licensee's fiscal year ends on March 31, its audited financial statements must be filed by July 14 of the same year. If a licensee is unable to file its audited financial statements within 105 days of the end of its fiscal year, the licensee may request an extension, which may be granted by the commissioner for good cause shown. A licensee's audited financial statements shall cover the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.

E. The authorized delegate information required by subsection B of § 6.2-1917 of the Code of Virginia shall be submitted to the commissioner through the registry's agent reporting functionality.

F. Any reports, notifications, or filings required by Chapter 19 or this chapter may be submitted to the commissioner through the registry, provided that the registry is capable of receiving such reports, notifications, or filings.

10VAC5-120-50. Assessment schedule for the examination and supervision of money order sellers and money transmitters.

Pursuant to subsection B of § 6.2-1905 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter 19. The assessment defrays the costs of the examination and supervision of licensees by the bureau.

The annual assessment shall be $0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter 19. The assessment shall be based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment as reported by each licensee in (i) the quarterly call reports filed through the registry or (ii) such other written reports as the commissioner may require pursuant to subsection D of § 6.2-1905 of the Code of Virginia. If a licensee fails to fully report its volume information for the prior calendar year by the assessment date, a provisional fee subject to adjustment when the information is reported, shall be assessed.

The amount calculated using the ~~above~~ schedule in this section shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before August 1 for the current calendar year. The assessment shall be paid by licensees on or before September 1.

~~The annual report, due April 15 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and April 15 of the year of the assessment, the licensee's initial annual assessment shall be $0.~~

Fees prescribed and assessed pursuant to this schedule are apart from~~,~~ and do not include~~,~~ the following: (i) the annual license renewal fee of $750 authorized by subsection A of § 6.2-1905 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § 6.2-1905 of the Code of Virginia.

10VAC5-120-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee or its authorized delegate in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws and regulations, the licensee or authorized delegate shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee or its authorized delegate to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information~~,~~ and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1910 of the Code of Virginia.

B. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

C. If the bureau requests information from an applicant to complete a deficient application filed under § 6.2-1903 or 6.2-1914 of the Code of Virginia, and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

10VAC5-120-70. Acquisitions; additional business requirements and restrictions; operating rules.

A. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 19 shall pay a nonrefundable application fee of $500.

B. A licensee shall not permit an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business.

C. ~~The audited financial statements filed by a licensee pursuant to § 6.2-1905 D of the Code of Virginia shall cover the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.~~

~~D. Quarterly financial statements filed by a licensee pursuant to § 6.2-1917 B of the Code of Virginia shall be consolidated and prepared in accordance with generally accepted accounting principles.~~

~~E.~~ A licensee shall comply with Chapter 19, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business. For purposes of Chapter 19 and this chapter, the acts and omissions of a licensee's authorized delegates shall be deemed acts and omissions of such licensee.

~~F.~~ D. In addition to the records specified in subsection B of § 6.2-1916 ~~B~~ of the Code of Virginia, a licensee shall maintain in its principal place of business such other books, accounts, and records as the commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of Chapter 19, this chapter, and other laws and regulations applicable to the conduct of its business.

~~G.~~ E. If a licensee, authorized delegate, or former licensee disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee, authorized delegate, or former licensee may arrange for service from a business record destruction vendor.

~~H.~~ F. A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person and the person who consumers may contact regarding outstanding money orders or money transmission transactions; (ii) the location of the licensee's or former licensee's money order and money transmission records; and (iii) any additional information that the bureau may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding money orders and money transmission transactions.

~~I.~~ G. A person shall remain subject to the provisions of Chapter 19 and this chapter applicable to licensees in connection with all money orders sold and money or monetary value received for transmission while licensed under Chapter 19 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered or revoked; or

2. The person ceases selling money orders or transmitting money or monetary value.

~~J.~~ H. A licensee shall not provide any information to a Virginia resident that is false, misleading, or deceptive.

~~K.~~ I. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 19 or this chapter.

~~L.~~ J. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1906 of the Code of Virginia.

VA.R. Doc. No. R19-6009; Filed July 1, 2019, 4:27 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: **12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-100; adding 12VAC5-220-155).**

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Effective Date: August 23, 2019.

Agency Contact: Erik Bodin, Division Director, COPN, MCHIP, and Cooperative Agreement, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-1889, or email erik.bodin@vdh.virginia.gov.

Summary:

As required by legislation enacted during the 2019 Session of the General Assembly, the amendments (i) establish an exemption from the requirement for a certificate of public need, for a period of no more than 30 days, for projects involving a temporary increase in the total number of beds in an existing hospital or nursing home when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds (Chapters 136 and 343) and (ii) require every medical care facility subject to the requirements of certificate of public need law whose certificate does not include conditions for charity care but opt to provide charity care to annually report the amount of charity care provided to the commissioner (Chapter 839).

Part III
Mandatory Requirements

12VAC5-220-100. Requirements for reviewable medical care facility projects; exceptions.

A. Prior to initiating a reviewable medical care facility project the owner or sponsor shall obtain a certificate of public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in 12VAC5-220-120 shall be met.

B. Projects involving a temporary increase in the total number of beds in an existing hospital or nursing home shall be exempt from the requirement for a certificate, for a period of no more than 30 days, if the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

12VAC5-220-155. Requirements for the reporting of charity care.

Every medical care facility subject to the requirements of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, other than a nursing home, that is not a medical care facility for which a certificate with conditions imposed pursuant to § 32.1-102.4 F of the Code of Virginia has been issued and that provides charity care, as defined in § 32.1-102.1 of the Code of Virginia, shall annually report to the commissioner the amount of charity care provided.

VA.R. Doc. No. R19-5942; Filed June 20, 2019, 5:41 p.m.

Final Regulation

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

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-30, 12VAC5-371-40).**

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

Effective Date: August 23, 2019.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

In accordance with Chapters 136 and 343 of the 2019 Acts of Assembly, the amendment establishes an exemption, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds in an existing nursing home when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of nursing home beds.

12VAC5-371-30. License.

A. A license to operate a facility is issued to a person or organization. An organization may be a partnership, association, corporation, or public entity.

B. Each license and renewal thereof shall be issued for one year. A nursing facility shall operate within the terms of its license, which include the:

1. Name of the facility;
2. Name of the operator;
3. Physical location of the nursing facility;
4. Maximum number of beds allowed; and
5. Date the license expires.

C. A separate license shall be required for nursing facilities maintained on separate premises, even though they are owned or are operated under the same management.

D. Every nursing facility shall be designated by a permanent and appropriate name. The name shall not be changed without first notifying the OLC.

E. The number of resident beds allowed in a nursing facility shall be determined by the department. Requests to increase beds must be made in writing and must include an approved Certificate of Public Need, except as provided in 12VAC5-371-40 J.

F. Nursing facility units located in and operated by hospitals shall be licensed under Regulations for the Licensure of Hospitals in Virginia (12VAC5-410). Approval for such units shall be included on the annual license issued to each hospital.

G. Any person establishing, conducting, maintaining, or operating a nursing facility without a license shall be guilty of a Class 6 felony.

12VAC5-371-40. Licensing process.

A. Upon request, the OLC will provide consultation to any person seeking information about obtaining a license. The purpose of such consultation is to:

1. Explain the standards and the licensing process;

2. Provide assistance in locating other sources of information;

3. Review the potential applicant's proposed program plans, forms, and other documents, as they relate to standards; and

4. Alert the potential applicant regarding the need to meet other state and local ordinances, such as fire and building codes and environmental health standards, where applicable.

B. Upon request, the OLC will provide an application form for a license to operate a nursing facility.

C. The OLC shall consider the application complete when all requested information and the application fee is submitted with the form required. If the OLC finds the application incomplete, the applicant will be notified of receipt of the incomplete application.

D. The applicant shall complete and submit the initial application to the OLC at least 30 days prior to a planned opening date to allow the OLC time to act on the application. An application for a license may be withdrawn at any time.

E. Application for initial license of a nursing facility shall include a statement of any agreement made with the commissioner as a condition for Certificate of Public Need approval to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

Any initial license issued to any nursing facility that made such agreement as a condition of its Certificate of Public Need approval shall not be renewed without demonstrating prior to or at the time of applying for renewal that it is substantially complying with its agreement.

F. The renewal of a nursing facility license shall be conditioned upon the up-to-date payment of any civil penalties owed as a result of willful refusal, failure, or neglect to honor certain conditions established in their award of a Certificate of Public Need pursuant to § 32.1-102.4 F of the Code of Virginia.

G. Prior to changes in operation which would affect the terms of the license, the licensee must secure a modification to the terms of the license from the OLC.

H. Requests to modify a license must be submitted in writing, 30 working days in advance of any proposed changes, to the Director of the Office of Licensure and Certification.

I. The license shall be returned to the OLC following a correction or reissuance when there has been a change in:

1. Address;

2. Operator;

3. Name; or

4. Bed capacity.

J. Nursing facilities shall be exempt, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

~~J.~~ K. The OLC will evaluate written information about any planned changes in operation which would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may visit the facility during the process of evaluating a proposed modification.

~~K.~~ L. If a modification can be granted, the OLC shall respond in writing with a modified license. In the event a new application is needed, the licensee will receive written notification. When the modification cannot be granted, the licensee shall be advised by letter.

~~L.~~ M. The department shall send an application for renewal of the license to the licensee prior to the expiration date of the current license.

~~M.~~ N. The licensee shall submit the completed renewal application form along with any required attachments and the application fee by the date indicated in the cover letter.

~~N.~~ O. It is the licensee's responsibility to complete and return the application to assure timely processing. Should a current license expire before a new license is issued, the

current license shall remain in effect provided the complete and accurate application was filed on time.

VA.R. Doc. No. R19-5944; Filed June 20, 2019, 5:42 p.m.

Final Regulation

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

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-110, 12VAC5-410-130, 12VAC5-410-230).**

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

Effective Date: August 23, 2019.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

In accordance with legislation enacted during the 2019 Session of the General Assembly, the amendments (i) establish an exemption, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds in an existing hospital when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital beds (Chapters 136 and 343) and (ii) require every hospital to provide written information about a patient's ability to request an estimate of the payment, post that information conspicuously in public areas of the hospital, including admissions or registration areas, and include that information on any website maintained by the hospital (Chapters 670 and 671).

12VAC5-410-110. Bed capacity.

A. Each license issued by the commissioner shall specify the maximum allowable number of beds. The number of beds allowed shall be determined by the OLC and shall so appear on the license issued by the OLC.

B. Request for licensed bed increase or decrease shall be made in writing to the OLC. No increase will be granted without an approved Certificate of Public Need.

C. Hospitals shall be exempt from the requirement to obtain a license to add temporary beds, for a period of no more than 30 days, when the commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

12VAC5-410-130. Return of license.

The OLC shall be notified in writing at least within 30 working days in advance of any proposed change in location or ownership of the facility. A license shall not be transferred from one owner to another or from one location to another. The license issued by the commissioner shall be returned to the OLC for correction or reissuance when any of the following changes occur during the licensing year:

1. Revocation;

2. Change of location;

3. Change of ownership;

4. Change of name;

5. Change of bed capacity, except as provided in 12VAC5-410-110 C; or

6. Voluntary closure.

Article 2
Patient Care Services

12VAC5-410-230. Patient care management.

A. All patients shall be under the care of a member of the medical staff.

B. Each hospital shall have a plan that includes effective mechanisms for the periodic review and revision of patient care policies and procedures.

C. Each hospital shall establish a protocol relating to the rights and responsibilities of patients based on Joint Commission on Accreditation of Healthcare Organizations' 2000 Hospital Accreditation Standards, January 2000. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities. Patients shall be given a copy of their rights and responsibilities upon admission.

D. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state statutes.

1. Hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, may accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians and other persons lawfully authorized by state statute to give patient orders.

2. As specified in the hospital's medical staff bylaws, rules and regulations, or hospital policies and procedures,

emergency telephone and other verbal orders shall be signed within a reasonable period of time not to exceed 72 hours, by the person giving the order, or, when such person is not available, cosigned by another physician or other person authorized to give the order.

E. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

F. Each hospital shall include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

G. Each hospital that is equipped to provide life-sustaining treatment shall develop a policy to determine the medical or ethical appropriateness of proposed medical care, which shall include:

1. A process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate;

2. Provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care of the patient;

3. Requirements for a written explanation of the decision of the interdisciplinary medical review committee, which shall be included in the patient's medical record; and

4. Provisions to ensure the patient, the patient's agent, or the person authorized to make the patient's medical decisions in accordance with § 54.1-2986 of the Code of Virginia is informed of the patient's right to obtain the patient's medical record and the right to obtain an independent medical opinion and afforded reasonable opportunity to participate in the medical review committee meeting.

The policy shall not prevent the patient, the patient's agent, or the person authorized to make the patient's medical decisions from obtaining legal counsel to represent the patient or from seeking other legal remedies, including court review, provided that the patient, the patient's agent, person authorized to make the patient's medical decisions, or legal counsel provide written notice to the chief executive officer of the hospital within 14 days of the date of the physician's determination that proposed medical treatment is medically or ethically inappropriate as documented in the patient's medical record.

H. Each hospital shall establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 USC § 1395dd(e)(1), the hospital shall provide the patient or the patient's authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan.

I. Each hospital shall provide written information about the patient's ability to request an estimate of the payment amount for which the participant will be responsible pursuant to § 32.1-137.05 of the Code of Virginia. The written information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, and included on any website maintained by the hospital.

VA.R. Doc. No. R19-5943; Filed June 20, 2019, 5:42 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-540).**

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-20, 12VAC30-50-30, 12VAC30-50-60, 12VAC30-50-70, 12VAC30-50-130, 12VAC30-50-226).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-5, 12VAC30-60-50, 12VAC30-60-61).

12VAC30-130. Amount, Duration and Scope of Selected Services (repealing 12VAC30-130-850 through 12VAC30-130-890).

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

Effective Date: August 22, 2019.

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.

Summary:

The regulatory action implements Items 301 OO and 301 PP of Chapter 665 of the 2015 Acts of Assembly, which required the department to develop and implement a care coordination model and make programmatic changes in the provision of residential treatment for children. The action replaces emergency regulations published in 33:13 VA.R. 1436-1469 February 20, 2017, and extended in 35:9 VA.R. 1130 December 24, 2018.

The amendments clarify policy interpretations and revise program standards to allow for more evidence-based service delivery, allow the department to implement more effective utilization management in collaboration with the behavioral health service administrator, enhance individualized coordination of care, implement standardized coordination of individualized aftercare resources by ensuring access to medical and behavioral health service providers in the individual's home community, and support department audit practices. The action meets the requirements set forth by the Centers for Medicare and Medicaid Services (CMS) in 42 CFR 441 Subpart D and 42 CFR 441.453.

The amendments include changes to the following areas: (i) provider qualifications, including acceptable licensing standards; (ii) preadmission assessment requirements; (iii) program requirements; (iv) discharge planning and care coordination requirements; and (v) utilization review requirements to clarify program requirements, ensure adequate documentation of service delivery, and help providers avoid payment retractions.

The action requires enhanced care coordination to provide the necessary objective evaluations of treatment progress and to facilitate evidence-based practices during the treatment to reduce the length of stay by ensuring that medical necessity indicates the correct level of care, that appropriate and effective care is delivered in a person centered manner, and that service providers and local systems use standardized preadmission and discharge processes to ensure effective services are delivered. The final regulatory text is the same as the proposed regulatory text.

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

12VAC30-10-540. Inspection of care in intermediate care facilities for ~~the mentally retarded~~ persons with intellectual and developmental disabilities, facilities providing inpatient psychiatric services for individuals ~~under~~ younger than 21 years of age, and mental hospitals.

All applicable requirements of 42 CFR 456, Subpart I~~,~~ are met with respect to periodic inspections of care and services.~~*~~

~~Inpatient psychiatric services for individuals under age 21 are not provided under this plan.~~

~~*Inspection of Care (IOC) in Intermediate Care Facilities for the Mentally Retarded and Institutions for Mental Diseases are~~ Inspection of care in intermediate care facilities for persons with intellectual and developmental disabilities is completed through contractual arrangements with the Virginia Department of Health.

12VAC30-50-20. Services provided to the categorically needy without limitation.

The following services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to the categorically needy without limitation:

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

2. Services for individuals ~~age~~ 65 years of age or ~~over~~ older in institutions for mental diseases: inpatient hospital services; skilled nursing facility services; and services in an intermediate care facility.

3. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902(a)(31)(A) of the Social Security Act (the Act), to be in need of such care, including such services in a public institution (or distinct part thereof) for ~~the mentally retarded or~~ persons with intellectual or developmental disability or related conditions.

4. Hospice care (in accordance with § 1905(o) of the Act).

5. Any other medical care and any type of remedial care recognized under state law, specified by the U.S. Secretary of Health and Human Services: care and services provided in religious nonmedical health care institutions~~;~~, nursing facility services for patients ~~under~~ younger than 21 years of age~~;~~, or emergency hospital services.

6. Private health insurance premiums, coinsurance, and deductibles when cost effective (pursuant to ~~Pub. L.~~ P.L. No. 101-508 § 4402).

7. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for categorically needy individuals without limitation.

8. Pursuant to ~~Pub. L.~~ P.L. No. 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered.

a. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and

nonprescription tobacco cessation agents approved by the U.S. Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished (i) by or under the supervision of a physician, (ii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and is authorized to provide Medicaid coverable services other than tobacco cessation services, or (iii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations for this purpose.

b. No cost sharing shall be applied to these services. In addition to other services that are covered for pregnant women, 12VAC30-50-510 also provides for other smoking cessation services that are covered for pregnant women.

9. Inpatient psychiatric facility services and residential psychiatric treatment services (including therapeutic group homes and psychiatric residential treatment facilities) for individuals younger than 21 years of age.

12VAC30-50-30. Services not provided to the categorically needy.

The following services and devices are not provided to the categorically needy:

1. ~~Chiropractors'~~ Chiropractor services.

2. Private duty nursing services.

3. Dentures.

4. Other diagnostic and preventive services other than those provided elsewhere in this plan: diagnostic services ~~(see~~ (12VAC30-50-95) ~~et seq.)~~.

5. ~~Inpatient psychiatric facility services for individuals under 21 years of age, other than those covered under early and periodic screening, diagnosis, and treatment (at 12VAC30-50-130).~~ (Reserved.)

6. Special tuberculosis ~~(TB)~~ related services under § 1902(z)(2)(F) of the Social Security Act (the Act).

7. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).

8. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).

9. Any other medical care and any type of remedial care recognized under state law specified by the U.S. Secretary of Health and Human Services: personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12VAC30-50-60. Services provided to all medically needy groups without limitations.

Services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to all medically needy groups without limitations.

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

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

3. Pursuant to ~~Pub. L.~~ P.L. No. 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered.

a. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and nonprescription tobacco cessation agents approved by the U.S. Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished (i) by or under the supervision of a physician, (ii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and is authorized to provide Medicaid coverable services other than tobacco cessation services, or (iii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations for this purpose.

b. No cost sharing shall be applied to these services. In addition to other services that are covered for pregnant women, 12VAC30-50-510 also provides for other smoking cessation services that are covered for pregnant women.

4. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Social Security Act (the Act) to be in need of such care.

5. Hospice care (in accordance with § 1905(o) of the Act).

6. Any other medical care or any other type of remedial care recognized under state law, specified by the ~~secretary~~ U.S. Secretary of Health and Human Services, including: care and services provided in religious nonmedical health care institutions~~;~~, skilled nursing facility services for

patients ~~under~~ younger than 21 years of age~~;~~, and emergency hospital services.

7. Private health insurance premiums, coinsurance and deductibles when cost effective (pursuant to ~~Pub. L.~~ P.L. No. 101-508 § 4402).

8. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for medically needy individuals without limitation.

9. Inpatient psychiatric facility services and residential psychiatric treatment services (including therapeutic group homes and psychiatric residential treatment facilities) for individuals younger than 21 years of age.

12VAC30-50-70. Services or devices not provided to the medically needy.

1. ~~Chiropractors'~~ Chiropractor services.

2. Private duty nursing services.

3. Dentures.

4. Diagnostic or preventive services other than those provided elsewhere in the State Plan.

5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals ~~age~~ 65 years of age or older in institutions for mental ~~disease(s)~~ diseases.

6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Social Security Act (the Act), to be in need of such care in a public institution, or a distinct part thereof, for ~~the mentally retarded or~~ persons with intellectual or developmental disability or related conditions.

7. ~~Inpatient psychiatric facility services for individuals under 21 years of age, other than those covered under early and periodic screening, diagnosis, and treatment (at 12VAC30-50-130).~~ (Reserved.)

8. Special tuberculosis ~~(TB)~~ services under § 1902(z)(2)(F) of the Act.

9. Respiratory care services (in accordance with § 1920(e)(9)(A) through (C) of the Act).

10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).

11. Personal care services in a recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12. Home and community care for functionally disabled elderly individuals, as defined, described and limited in ~~12VAC30-50-460 and~~ 12VAC30-50-470.

13. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for ~~the mentally retarded~~ intellectually or developmentally disabled persons, or institution for mental disease that are (i) authorized for the individual by a physician in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (iii) furnished in a home.

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~~ General provisions for early and periodic screening ~~and~~, diagnosis, and treatment (EPSDT) 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 departments of 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~~ DMAS shall place appropriate utilization controls upon this service.

4. Consistent with § 6403 of 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 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 of age and older, provided for by § 1905(a) of the Social Security Act.

5. C. Community mental health services provided through early and periodic screening diagnosis and treatment (EPSDT) for individuals younger than 21 years of age. 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 shall be reflected in provider records and on providers' provider claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

a. 1. 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 this term, 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 the 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.

"Child" means an individual ages birth through 11 years.

"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 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 the Department of Health Professions in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013 Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted November 3, 2017, revised February 9, 2018.

"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 <u>including a "QMHP-trainee" as defined by the Department of Health Professions</u>.

"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

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~~ issue or 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~~ educational or 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.~~ 2. Intensive in-home services (IIH) to children and adolescents 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~~,~~ and 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 of psychoeducation 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~~ the individual's 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)~~ a. 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)~~ b. Service-specific provider intakes shall be required prior to the start of services 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)~~ c. These services ~~may~~ shall only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

~~c.~~ 3. Therapeutic day treatment (TDT) shall be provided two or more hours per day in order to provide therapeutic interventions (a unit is defined in 12VAC30-60-61 D 11). Day treatment programs 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)~~ a. Service authorization shall be required for Medicaid reimbursement.

~~(2)~~ b. Service-specific provider intakes shall be required ~~at~~ prior to the ~~onset~~ start 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)~~ c. These services ~~may~~ shall 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 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 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.~~

D. Therapeutic group home services and psychiatric residential treatment facility (PRTF) services for early and periodic screening diagnosis and treatment (EPSDT) of individuals younger than 21 years of age.

1. Definitions. The following words and terms when used in this subsection shall have the following meanings:

"Active treatment" means implementation of an initial plan of care (IPOC) and comprehensive individual plan of care (CIPOC).

"Assessment" means the face-to-face interaction by an LMHP, LMHP-R, LMHP-RP, or LMHP-S to obtain information from the child or adolescent and parent, guardian, or other family member, as appropriate, utilizing a tool or series of tools to provide a comprehensive evaluation and review of the child's or adolescent's mental health status. The assessment shall include a documented history of the severity, intensity, and duration of mental health problems and behavioral and emotional issues.

"Certificate of need" or "CON" means a written statement by an independent certification team that services in a therapeutic group home or PRTF are or were needed.

"Combined treatment services" means a structured, therapeutic milieu and planned interventions that promote (i) the development or restoration of adaptive functioning, self-care, and social skills; (ii) community integrated activities and community living skills that each individual requires to live in less restrictive environments; (iii) behavioral consultation; (iv) individual and group therapy; (v) skills restoration, the restoration of coping skills, family living and health awareness, interpersonal skills, communication skills, and stress management skills; (vi) family education and family therapy; and (vii) individualized treatment planning.

"Comprehensive individual plan of care" or "CIPOC" means a person centered plan of care that meets all of the requirements of this subsection and is specific to the individual's unique treatment needs and acuity levels as identified in the clinical assessment and information gathered during the referral process.

"Crisis" means a deteriorating or unstable situation that produces an acute, heightened emotional, mental, physical, medical, or behavioral event.

"Crisis management" means immediately provided activities and interventions designed to rapidly manage a crisis. The activities and interventions include behavioral health care to provide immediate assistance to individuals experiencing acute behavioral health problems that require immediate intervention to stabilize and prevent harm and higher level of acuity. Activities shall include assessment and short-term counseling designed to stabilize the individual. Individuals are referred to long-term services once the crisis has been stabilized.

"Daily supervision" means the supervision provided in a PRTF through a resident-to-staff ratio approved by the Office of Licensure at the Department of Behavioral Health and Developmental Services with documented supervision checks every 15 minutes throughout a 24-hour period.

"Discharge planning" means family and locality-based care coordination that begins upon admission to a PRTF or therapeutic group home with the goal of transitioning the individual out of the PRTF or therapeutic group home to a less restrictive care setting with continued, clinically-appropriate, and possibly intensive, services as soon as possible upon discharge. Discharge plans shall be recommended by the treating physician, psychiatrist, or treating LMHP responsible for the overall supervision of the plan of care and shall be approved by the DMAS contractor.

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Emergency admissions" means those admissions that are made when, pending a review for the certificate of need, it appears that the individual is in need of an immediate admission to a therapeutic group home or PRTF and likely does not meet the medical necessity criteria to receive crisis intervention, crisis stabilization, or acute psychiatric inpatient services.

"Emergency services" means unscheduled and sometimes scheduled crisis intervention, stabilization, acute psychiatric inpatient services, and referral assistance provided over the telephone or face-to-face if indicated, and available 24 hours a day, seven days per week.

"Family engagement" means a family-centered and strengths-based approach to partnering with families in making decisions, setting goals, achieving desired outcomes, and promoting safety, permanency, and well-being for children, adolescents, and families. Family engagement requires ongoing opportunities for an individual to build and maintain meaningful relationships with family members, for example, frequent, unscheduled, and noncontingent telephone calls and visits between an individual and family members. Family engagement may also include enhancing or facilitating the development of the individual's relationship with other family members and supportive adults responsible for the individual's care and well-being upon discharge.

"Family engagement activity" means an intervention consisting of family psychoeducational training or coaching, transition planning with the family, family and independent living skills, and training on accessing community supports as identified in the plan of care. Family engagement activity does not include and is not the same as family therapy.

"Family therapy" means counseling services involving the individual's family and significant others to advance the treatment goals when (i) the counseling with the family member and significant others is for the direct benefit of the individual, (ii) the counseling is not aimed at addressing treatment needs of the individual's family or significant others, and (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. Family therapy shall be aligned with the goals of the individual's plan of care. All family therapy services furnished are for the direct benefit of the individual, in accordance with the individual's needs and treatment goals identified in the individual's plan of care, and for the purpose of assisting in the individual's recovery.

"FAPT" means the family assessment and planning team.

"ICD-10" means International Statistical Classification of Diseases and Related Health Problems, 10th Revision, published by the World Health Organization.

"Independent certification team" means a team that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry; has knowledge of the individual's situation; and is composed of at least one physician and one LMHP. The independent certification team shall be a DMAS-authorized contractor with contractual or employment relationships with the required team members.

"Individual" means the child or adolescent younger than 21 years of age who is receiving therapeutic group home or PRTF services.

"Individual and group therapy" means the application of principles, standards, and methods of the counseling profession in (i) conducting assessments and diagnosis for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating plans of care using treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

"Initial plan of care" or "IPOC" means a person centered plan of care established at admission that meets all of the requirements of this subsection and is specific to the individual's unique treatment needs and acuity levels as identified in the clinical assessment and information gathered during the referral process.

"Intervention" means scheduled therapeutic treatment such as individual or group psychoeducation; skills restoration; structured behavior support and training activities; recreation, art, and music therapies; community integration

activities that promote or assist in the child's or adolescent's ability to acquire coping and functional or self-regulating behavior skills; day and overnight passes; and family engagement activities. Interventions shall not include individual, group, and family therapy; medical or dental appointments; or physician services, medication evaluation, or management provided by a licensed clinician or physician and shall not include school attendance. Interventions shall be provided in the therapeutic group home or PRTF and, when clinically necessary, in a community setting or as part of a therapeutic pass. All interventions and settings of the intervention shall be established in the plan of care.

"Plan of care" means the initial plan of care (IPOC) and the comprehensive individual plan of care (CIPOC).

"Physician" means an individual licensed to practice medicine or osteopathic medicine in Virginia, as defined in § 54.1-2900 of the Code of Virginia.

"Psychiatric residential treatment facility" or "PRTF" means the same as defined in 42 CFR 483.352 and is a 24-hour, supervised, clinically and medically necessary, out-of-home active treatment program designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, and training needs of an individual younger than 21 years of age in order to prevent or minimize the need for more intensive treatment.

"Recertification" means a certification for each applicant or recipient for whom therapeutic group home or PRTF services are needed.

"Room and board" means a component of the total daily cost for placement in a licensed PRTF. Residential room and board costs are maintenance costs associated with placement in a licensed PRTF and include a semi-private room, three meals and two snacks per day, and personal care items. Room and board costs are reimbursed only for PRTF settings.

"Services provided under arrangement" means services including physician and other health care services that are furnished to children while they are in a freestanding psychiatric hospital or PRTF that are billed by the arranged practitioners separately from the freestanding psychiatric hospital's or PRTF's per diem.

"Skills restoration" means a face-to-face service to assist individuals in the restoration of lost skills that are necessary to achieve the goals established in the beneficiary's plan of care. Services include assisting the individual in restoring self-management, interpersonal, communication, and problem solving skills through modeling, coaching, and cueing.

"Therapeutic group home" means a congregate residential service providing 24-hour supervision in a community-based home having eight or fewer residents.

"Therapeutic pass" means time at home or time with family consisting of partial or entire days of time away from the therapeutic group home or psychiatric residential treatment facility as clinically indicated in the plan of care and as paired with facility-based and community-based interventions to promote discharge planning, community integration, and family engagement activities. Therapeutic passes are not recreational but are a therapeutic component of the plan of care and are designed for the direct benefit of the individual.

"Treatment planning" means development of a person centered plan of care that is specific to the individual's unique treatment needs and acuity levels.

~~e.~~ 2. Therapeutic ~~behavioral~~ group home 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)~~ a. Therapeutic group home services for children and adolescents younger than 21 years of age shall provide therapeutic services to restore or maintain appropriate skills necessary to promote prosocial behavior and healthy living, including skills restoration, family living and health awareness, interpersonal skills, communication skills, and stress management skills. Therapeutic services shall also engage families and reflect family-driven practices that correlate to sustained positive outcomes post-discharge for youth and their family members. Each component of therapeutic group home services is provided for the direct benefit of the

individual, in accordance with the individual's needs and treatment goals identified in the individual's plan of care, and for the purpose of assisting in the individual's recovery. These services are provided under 42 CFR 440.130(d) in accordance with the rehabilitative services benefit.

b. The plan of care shall include individualized activities, including a minimum of one intervention per 24-hour period in addition to individual, group, and family therapies. Daily interventions are not required when there is documentation to justify clinical or medical reasons for the individual's deviations from the plan of care. Interventions shall be documented on a progress note and shall be outlined in and aligned with the treatment goals and objectives in the IPOC and CIPOC. Any deviation from the plan of care shall be documented along with a clinical or medical justification for the deviation.

c. Medical necessity criteria for admission to a therapeutic group home. The following requirements for severity of need and intensity and quality of service shall be met to satisfy the medical necessity criteria for admission.

(1) Severity of need required for admission. All of the following criteria shall be met to satisfy the criteria for severity of need:

(a) The individual's behavioral health condition can only be safely and effectively treated in a 24-hour therapeutic milieu with onsite behavioral health therapy due to significant impairments in home, school, and community functioning caused by current mental health symptoms consistent with a DSM-5 diagnosis.

(b) The certificate of need must demonstrate all of the following: (i) ambulatory care resources (all available modalities of treatment less restrictive than inpatient treatment) available in the community do not meet the treatment needs of the individual; (ii) proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and (iii) the services can reasonably be expected to improve the individual's condition or prevent further regression so that the services will no longer be needed.

(c) The state uniform assessment tool shall be completed. The assessment shall demonstrate at least two areas of moderate impairment in major life activities. A moderate impairment is defined as a major or persistent disruption in major life activities. A moderate impairment is evidenced by, but not limited to (i) frequent conflict in the family setting such as credible threats of physical harm, where "frequent" means more than expected for the individual's age and developmental level; (ii) frequent inability to accept age-appropriate direction and supervision from caretakers, from family members, at school, or in the home or community; (iii) severely limited involvement in social support, which means significant avoidance of appropriate social interaction, deterioration of existing relationships, or refusal to participate in therapeutic interventions; (iv) impaired ability to form a trusting relationship with at least one caretaker in the home, school, or community; (v) limited ability to consider the effect of one's inappropriate conduct on others; and (vi) interactions consistently involving conflict, which may include impulsive or abusive behaviors.

(d) Less restrictive community-based services have been given a fully adequate trial and were unsuccessful or, if not attempted, have been considered, but in either situation were determined to be unable to meet the individual's treatment needs and the reasons for that are discussed in the certificate of need.

(e) The individual's symptoms, or the need for treatment in a 24 hours a day, seven days a week level of care (LOC), are not primarily due to any of the following: (i) intellectual disability, developmental disability, or autistic spectrum disorder; (ii) organic mental disorders, traumatic brain injury, or other medical condition; or (iii) the individual does not require a more intensive level of care.

(f) The individual does not require primary medical or surgical treatment.

(2) Intensity and quality of service necessary for admission. All of the following criteria shall be met to satisfy the criteria for intensity and quality of service:

(a) The therapeutic group home service has been prescribed by a psychiatrist, psychologist, or other LMHP who has documented that a residential setting is the least restrictive clinically appropriate service that can meet the specifically identified treatment needs of the individual.

(b) The therapeutic group home is not being used for clinically inappropriate reasons, including (i) an alternative to incarceration or preventative detention; (ii) an alternative to a parent's, guardian's, or agency's capacity to provide a place of residence for the individual; or (iii) a treatment intervention when other less restrictive alternatives are available.

(c) The individual's treatment goals are included in the service specific provider intake and include behaviorally defined objectives that require and can reasonably be achieved within a therapeutic group home setting.

(d) The therapeutic group home is required to coordinate with the individual's community resources, including schools and FAPT as appropriate, with the goal of transitioning the individual out of the program to a less

restrictive care setting for continued, sometimes intensive, services as soon as possible and appropriate.

(e) The therapeutic group home program must incorporate nationally established, evidence-based, trauma-informed services and supports that promote recovery and resiliency.

(f) Discharge planning begins upon admission, with concrete plans for the individual to transition back into the community beginning within the first week of admission, with clear action steps and target dates outlined in the plan of care.

(3) Continued stay criteria. The following criteria shall be met in order to satisfy the criteria for continued stay:

(a) All of the admission guidelines continue to be met and continue to be supported by the written clinical documentation.

(b) The individual shall meet one of the following criteria: (i) the desired outcome or level of functioning has not been restored or improved in the timeframe outlined in the individual's plan of care or the individual continues to be at risk for relapse based on history or (ii) the nature of the functional gains is tenuous and use of less intensive services will not achieve stabilization.

(c) The individual shall meet one of the following criteria: (i) the individual has achieved initial CIPOC goals, but additional goals are indicated that cannot be met at a lower level of care; (ii) the individual is making satisfactory progress toward meeting goals but has not attained plan of care goals, and the goals cannot be addressed at a lower level of care; (iii) the individual is not making progress, and the plan of care has been modified to identify more effective interventions; or (iv) there are current indications that the individual requires this level of treatment to maintain level of functioning as evidenced by failure to achieve goals identified for therapeutic visits or stays in a nontreatment residential setting or in a lower level of residential treatment.

(d) There is a written, up-to-date discharge plan that (i) identifies the custodial parent or custodial caregiver at discharge; (ii) identifies the school the individual will attend at discharge, if applicable; (iii) includes individualized education program (IEP) and FAPT recommendations, if necessary; (iv) outlines the aftercare treatment plan (discharge to another residential level of care is not an acceptable discharge goal); and (v) lists barriers to community reintegration and progress made on resolving these barriers since last review.

(e) The active plan of care includes structure for combined treatment services and activities to ensure the attainment of therapeutic mental health goals as identified in the plan of care. Combined treatment services reinforce and practice skills learned in individual, group, and family therapy such as community integration skills, coping skills, family living and health awareness skills, interpersonal skills, and stress management skills. Combined treatment services may occur in group settings, in one-on-one interactions, or in the home setting during a therapeutic pass. In addition to the combined treatment services, the child or adolescent must also receive psychotherapy services, care coordination, family-based discharge planning, and locality-based transition activities. The child or adolescent shall receive intensive family interventions at least twice per month, although it is recommended that the intensive family interventions be provided at a frequency of one family therapy session per week. Family involvement begins immediately upon admission to therapeutic group home. If the minimum requirement cannot be met, the reasons must be reported, and continued efforts to involve family members must also be documented. Other family members or supportive adults may be included as indicated in the plan of care.

(f) Less restrictive treatment options have been considered but cannot yet meet the individual's treatment needs. There is sufficient current clinical documentation or evidence to show that therapeutic group home level of care continues to be the least restrictive level of care that can meet the individual's mental health treatment needs.

(4) Discharge shall occur if any of the following applies: (i) the level of functioning has improved with respect to the goals outlined in the plan of care, and the individual can reasonably be expected to maintain these gains at a lower level of treatment; (ii) the individual no longer benefits from service as evidenced by absence of progress toward plan of care goals for a period of 60 days; or (iii) other less intensive services may achieve stabilization.

d. The following clinical activities shall be required for each therapeutic group home resident:

(1) An assessment be performed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S.

(2) A face-to-face evaluation shall be performed by an LMHP, LMHP-R, LMHP-RP, or LMHP-S within 30 calendar days prior to admission with a documented DSM-5 or ICD-10 diagnosis.

(3) A certificate of need shall be completed by an independent certification team according to the requirements of subdivision D 4 of this section. Recertification shall occur at least every 60 calendar days by an LMHP, LMHP-R, LMHP-RP, or LMHP-S acting within his scope of practice.

(4) An IPOC that is specific to the individual's unique treatment needs and acuity levels. The IPOC shall be

completed on the day of admission by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be signed by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual and a family member or legally authorized representative. The IPOC shall include all of the following:

(a) Individual and family strengths and personal traits that would facilitate recovery and opportunities to develop motivational strategies and treatment alliance;

(b) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(c) A description of the functional level of the individual;

(d) Treatment objectives with short-term and long-term goals;

(e) Orders for medications, psychiatric, medical, dental, and any special health care needs whether or not provided in the facilities, treatments, restorative and rehabilitative services, activities, therapies, therapeutic passes, social services, community integration, diet, and special procedures recommended for the health and safety of the individual;

(f) Plans for continuing care, including review and modification to the plan of care; and

(g) Plans for discharge.

(5) A CIPOC shall be completed no later than 14 calendar days after admission. The CIPOC shall meet all of the following criteria:

(a) Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and shall reflect the need for therapeutic group home care;

(b) Be based on input from school, home, other health care providers, FAPT if necessary, the individual, and the family or legal guardian;

(c) Shall state treatment objectives that include measurable short-term and long-term goals and objectives, with target dates for achievement;

(d) Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

(e) Include a comprehensive discharge plan with necessary, clinically appropriate community services to ensure continuity of care upon discharge with the individual's family, school, and community.

(6) The CIPOC shall be reviewed, signed, and dated every 30 calendar days by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual or a family member or primary caregiver. Updates shall be signed and dated by the LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual or a family member or legally authorized representative. The review shall include all of the following:

(a) The individual's response to the services provided;

(b) Recommended changes in the plan as indicated by the individual's overall response to the CIPOC interventions; and

(c) Determinations regarding whether the services being provided continue to be required.

(7) Crisis management, clinical assessment, and individualized therapy shall be provided to address both behavioral health and substance use disorder needs as indicated in the plan of care to address intermittent crises and challenges within the therapeutic group home setting or community settings as defined in the plan of care and to avoid a higher level of care.

(8) Care coordination shall be provided with medical, educational, and other behavioral health providers and other entities involved in the care and discharge planning for the individual as included in the plan of care.

(9) Weekly individual therapy shall be provided in the therapeutic group home, or other settings as appropriate for the individual's needs, by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, which shall be documented in progress notes in accordance with the requirements in 12VAC30-60-61.

(10) Weekly (or more frequently if clinically indicated) group therapy shall be provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, which shall be documented in progress notes in accordance with the requirements in 12VAC30-60-61 and as planned and documented in the plan of care.

(11) Family treatment shall be provided as clinically indicated, provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S, and documented in progress notes in accordance with the requirements in 12VAC30-60-61 and as planned and documented in the plan of care.

(12) Family engagement activities shall be provided in addition to family therapy or counseling. Family engagement activities shall be provided at least weekly as outlined in the plan of care, and daily communication with the family or legally authorized representative shall be part of the family engagement strategies in the plan of care. For each service authorization period when family engagement is not possible, the therapeutic group home shall identify and document the specific barriers to the individual's engagement with the individual's family or legally authorized representatives. The therapeutic group home shall document on a weekly basis the reasons why

family engagement is not occurring as required. The therapeutic group home shall document alternative family engagement strategies to be used as part of the interventions in the plan of care and request approval of the revised plan of care by DMAS. When family engagement is not possible, the therapeutic group home shall collaborate with DMAS on a weekly basis to develop individualized family engagement strategies and document the revised strategies in the plan of care.

(13) Therapeutic passes shall be provided as clinically indicated in the plan of care and as paired with facility-based and community-based interventions to promote discharge planning, community integration, and family engagement activities.

(a) The provider shall document how the family was prepared for the therapeutic pass to include a review of the plan of care goals and objectives being addressed by the planned interventions and the safety and crisis plan in effect during the therapeutic pass.

(b) If a facility staff member does not accompany the individual on the therapeutic pass and the therapeutic pass exceeds 24 hours, the provider shall make daily contacts with the family and be available 24 hours per day to address concerns, incidents, or crises that may arise during the pass.

(c) Contact with the family shall occur within seven calendar days of the therapeutic pass to discuss the accomplishments and challenges of the therapeutic pass along with an update on progress toward plan of care goals and any necessary changes to the plan of care.

(d) Twenty-four therapeutic passes shall be permitted per individual, per admission, without authorization as approved by the treating LMHP and documented in the plan of care. Additional therapeutic passes shall require service authorization. Any unauthorized therapeutic passes shall result in retraction for those days of service.

(14) Discharge planning shall begin at admission and continue throughout the individual's stay at the therapeutic group home. The family or guardian, the community services board (CSB), the family assessment and planning team (FAPT) case manager, and the DMAS contracted care manager shall be involved in treatment planning and shall identify the anticipated needs of the individual and family upon discharge and available services in the community. Prior to discharge, the therapeutic group home shall submit an active and viable discharge plan to the DMAS contractor for review. Once the DMAS contractor approves the discharge plan, the provider shall begin actively collaborating with the family or legally authorized representative and the treatment team to identify behavioral health and medical providers and schedule appointments for service-specific provider intakes as needed. The therapeutic group home shall request permission from the parent or legally authorized representative to share treatment information with these providers and shall share information pursuant to a valid release. The therapeutic group home shall request information from post-discharge providers to establish that the planning of pending services and transition planning activities has begun, shall establish that the individual has been enrolled in school, and shall provide individualized education program recommendations to the school if necessary. The therapeutic group home shall inform the DMAS contractor of all scheduled appointments within 30 calendar days of discharge and shall notify the DMAS contractor within one business day of the individual's discharge date from the therapeutic group home.

(15) Room and board costs shall not be reimbursed. Facilities that only provide independent living services or nonclinical services that do not meet the requirements of this subsection are not ~~reimbursed~~ eligible for reimbursement. ~~DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.~~

~~(4) These residential~~ (16) Therapeutic group home services providers ~~must~~ shall 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 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)~~ (17) Individuals shall be discharged from this service when treatment goals are met or 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.~~ (18) Services that are based upon incomplete, missing, or outdated service-specific provider intakes or ~~ISPs~~ plans of care shall be denied reimbursement. ~~Requirements for intakes and ISPs are set out in 12VAC30-60-61.~~

~~(9) These~~ (19) Therapeutic group home services may only be rendered by and within the scope of practice of an LMHP, LMHP-supervisee, LMHP-resident,

LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH as defined in 12VAC35-105-20.

~~(10)~~ (20) The ~~facility/group~~ psychiatric residential treatment facility or therapeutic group home shall coordinate necessary services and discharge planning with other providers as medically and clinically necessary. Documentation of this care coordination shall be maintained by the ~~facility/group~~ facility or group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, ~~and~~ what information was transmitted, and recommended next steps.

(21) Failure to perform any of the items described in this subsection shall result in a retraction of the per diem for each day of noncompliance.

3. PRTF services are a 24-hour, supervised, clinically and medically necessary out-of-home program designed to provide necessary support and address mental health, behavioral, substance use, cognitive, or other treatment needs of an individual younger than 21 years of age in order to prevent or minimize the need for more inpatient treatment. Active treatment and comprehensive discharge planning shall begin prior to admission. In order to be covered for individuals younger than 21 years of age, these services shall (i) meet DMAS-approved psychiatric medical necessity criteria or be approved as an EPSDT service based upon a diagnosis made by an LMHP, LMHP-R, LMHP-RP, or LMHP-S who is practicing within the scope of his license and (ii) be reflected in provider records and on the provider's claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

a. PRTF services shall be covered for the purpose of diagnosis and treatment of mental health and behavioral disorders when such services are rendered by a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the state.

b. Providers of PRTF services shall be licensed by DBHDS.

c. PRTF 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 service authorized, and the treatment must meet DMAS requirements for clinical necessity.

d. The PRTF 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 PRTF services at the earliest possible time. The PRTF services benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the PRTF, as long as the PRTF (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 PRTF. 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.

e. PRTFs, 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) nonemergency transportation services; and (x) emergency services.

f. PRTF services shall include assessment and reassessment; room and board; daily supervision; combined treatment services; individual, family, and group therapy; care coordination; interventions; general or special education; medical treatment (including medication, coordination of necessary medical services, and 24-hour onsite nursing); specialty services; and discharge planning that meets the medical and clinical needs of the individual.

g. Medical necessity criteria for admission to a PRTF. The following requirements for severity of need and intensity and quality of service shall be met to satisfy the medical necessity criteria for admission:

(1) Severity of need required for admission. The following criteria shall be met to satisfy the criteria for severity of need:

(a) There is clinical evidence that the individual has a DSM-5 disorder that is amenable to active psychiatric treatment.

(b) There is a high degree of potential of the condition leading to acute psychiatric hospitalization in the absence of residential treatment.

(c) Either (i) there is clinical evidence that the individual would be a risk to self or others if the individual were not in a PRTF or (ii) as a result of the individual's mental disorder, there is an inability for the individual to adequately care for his own physical needs, and caretakers, guardians, or family members are unable to safely fulfill these needs, representing potential serious harm to self.

(d) The individual requires supervision seven days per week, 24 hours per day to develop skills necessary for daily living; to assist with planning and arranging access to a range of educational, therapeutic, and aftercare services; and to develop the adaptive and functional behavior that will allow the individual to live outside of a PRTF setting.

(e) The individual's current living environment does not provide the support and access to therapeutic services needed.

(f) The individual is medically stable and does not require the 24-hour medical or nursing monitoring or procedures provided in a hospital level of care.

(2) Intensity and quality of service necessary for admission. The following criteria shall be met to satisfy the criteria for intensity and quality of service:

(a) The evaluation and assignment of a DSM-5 diagnosis must result from a face-to-face psychiatric evaluation.

(b) The program provides supervision seven days per week, 24 hours per day to assist with the development of skills necessary for daily living; to assist with planning and arranging access to a range of educational, therapeutic, and aftercare services; and to assist with the development of the adaptive and functional behavior that will allow the individual to live outside of a PRTF setting.

(c) An individualized plan of active psychiatric treatment and residential living support is provided in a timely manner. This treatment must be medically monitored, with 24-hour medical availability and 24-hour nursing services availability. This plan includes (i) at least once-a-week psychiatric reassessments; (ii) intensive family or support system involvement occurring at least once per week or valid reasons identified as to why such a plan is not clinically appropriate or feasible; (iii) psychotropic medications, when used, are to be used with specific target symptoms identified; (iv) evaluation for current medical problems; (v) evaluation for concomitant substance use issues; and (vi) linkage or coordination with the individual's community resources, including the local school division and FAPT case manager, as appropriate, with the goal of returning the individual to his regular social environment as soon as possible, unless contraindicated. School contact should address an individualized educational plan as appropriate.

(d) A urine drug screen is considered at the time of admission, when progress is not occurring, when substance misuse is suspected, or when substance use and medications may have a potential adverse interaction. After a positive screen, additional random screens are considered and referral to a substance use disorder provider is considered.

(3) Criteria for continued stay. The following criteria shall be met to satisfy the criteria for continued stay:

(a) Despite reasonable therapeutic efforts, clinical evidence indicates at least one of the following: (i) the persistence of problems that caused the admission to a degree that continues to meet the admission criteria (both severity of need and intensity of service needs); (ii) the emergence of additional problems that meet the admission criteria (both severity of need and intensity of service needs); or (iii) that disposition planning or attempts at therapeutic reentry into the community have resulted in or would result in exacerbation of the psychiatric illness to the degree that would necessitate continued PRTF treatment. Subjective opinions without objective clinical information or evidence are not sufficient to meet severity of need based on justifying the expectation that there would be a decompensation.

(b) There is evidence of objective, measurable, and time-limited therapeutic clinical goals that must be met before the individual can return to a new or previous living situation. There is evidence that attempts are being made to secure timely access to treatment resources and housing in anticipation of discharge, with alternative housing contingency plans also being addressed.

(c) There is evidence that the plan of care is focused on the alleviation of psychiatric symptoms and precipitating psychosocial stressors that are interfering with the individual's ability to return to a less-intensive level of care.

(d) The current or revised plan of care can be reasonably expected to bring about significant improvement in the problems meeting the criteria in subdivision 3 c (3) (a) of this subsection, and this is documented in weekly progress notes written and signed by the provider.

(e) There is evidence of intensive family or support system involvement occurring at least once per week,

unless there is an identified valid reason why it is not clinically appropriate or feasible.

(f) A discharge plan is formulated that is directly linked to the behaviors or symptoms that resulted in admission and begins to identify appropriate post-PRTF resources including the local school division and FAPT case manager as appropriate.

(g) All applicable elements in admission-intensity and quality of service criteria are applied as related to assessment and treatment if clinically relevant and appropriate.

(4) Discharge criteria. Discharge shall occur if any of the following applies: (i) the level of functioning has improved with respect to the goals outlined in the plan of care, and the individual can reasonably be expected to maintain these gains at a lower level of treatment; (ii) the individual no longer benefits from service as evidenced by absence of progress toward plan of care goals for a period of 30 days; or (iii) other less intensive services may achieve stabilization.

h. The following clinical activities shall be required for each PRTF resident:

(1) A face-to-face assessment shall be performed by an LMHP, LMHP-R, LMHP-RS, or LMHP-S within 30 calendar days prior to admission and weekly thereafter and shall document a DSM-5 or ICD-10 diagnosis.

(2) A certificate of need shall be completed by an independent certification team according to the requirements of 12VAC30-50-130 D 4. Recertification shall occur at least every 30 calendar days by a physician acting within his scope of practice.

(3) The initial plan of care (IPOC) shall be completed within 24 hours of admission by the treatment team. The IPOC shall include:

(a) Individual and family strengths and personal traits that would facilitate recovery and opportunities to develop motivational strategies and treatment alliance;

(b) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(c) A description of the functional level of the individual;

(d) Treatment objectives with short-term and long-term goals;

(e) Any orders for medications, psychiatric, medical, dental, and any special health care needs, whether or not provided in the facility; education or special education; treatments; interventions; and restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the individual;

(f) Plans for continuing care, including review and modification to the plan of care;

(g) Plans for discharge; and

(h) Signature and date by the individual, parent, or legally authorized representative, a physician, and treatment team members.

(4) The CIPOC shall be completed and signed no later than 14 calendar days after admission by the treatment team. The PRTF shall request authorizations from families to release confidential information to collect information from medical and behavioral health treatment providers, schools, FAPT, social services, court services, and other relevant parties. This information shall be used when considering changes and updating the CIPOC. The CIPOC shall meet all of the following criteria:

(a) Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and must reflect the need for PRTF care;

(b) Be developed by an interdisciplinary team of physicians and other personnel specified in subdivision 3 d 4 of this subsection who are employed by or provide services to the individual in the facility in consultation with the individual, family member, or legally authorized representative, or appropriate others into whose care the individual will be released after discharge;

(c) Shall state treatment objectives that shall include measurable, evidence-based, and short-term and long-term goals and objectives; family engagement activities; and the design of community-based aftercare with target dates for achievement;

(d) Prescribe an integrated program of therapies, interventions, activities, and experiences designed to meet the treatment objectives related to the individual and family treatment needs; and

(e) Describe comprehensive transition plans and coordination of current care and post-discharge plans with related community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

(5) The CIPOC shall be reviewed every 30 calendar days by the team specified in subdivision 3 d 4 of this subsection to determine that services being provided are or were required from a PRTF and to recommend changes in the plan as indicated by the individual's overall adjustment during the time away from home. The CIPOC shall include the signature and date from the individual, parent, or legally authorized representative, a physician, and treatment team members.

(6) Individual therapy shall be provided three times per week (or more frequently based upon the individual's needs) provided by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the requirements in this subsection and 12VAC30-60-61.

(7) Group therapy shall be provided as clinically indicated by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the requirements in this subsection.

(8) Family therapy shall be provided as clinically indicated by an LMHP, LMHP-R, LMHP-RP, or LMHP-S and shall be documented in the plan of care and progress notes in accordance with the individual and family or legally authorized representative's goals and the requirements in this subsection.

(9) Family engagement shall be provided in addition to family therapy or counseling. Family engagement shall be provided at least weekly as outlined in the plan of care and daily communication with the treatment team representative and the treatment team representative and the family or legally authorized representative shall be part of the family engagement strategies in the plan of care. For each service authorization period when family engagement is not possible, the PRTF shall identify and document the specific barriers to the individual's engagement with his family or legally authorized representatives. The PRTF shall document on a weekly basis the reasons that family engagement is not occurring as required. The PRTF shall document alternate family engagement strategies to be used as part of the interventions in the plan of care and request approval of the revised plan of care by DMAS. When family engagement is not possible, the PRTF shall collaborate with DMAS on a weekly basis to develop individualized family engagement strategies and document the revised strategies in the plan of care.

(10) Three interventions shall be provided per 24-hour period including nights and weekends. Family engagement activities are considered to be an intervention and shall occur based on the treatment and visitation goals and scheduling needs of the family or legally authorized representative. Interventions shall be documented on a progress note and shall be outlined in and aligned with the treatment goals and objectives in the plan of care. Any deviation from the plan of care shall be documented along with a clinical or medical justification for the deviation based on the needs of the individual.

(11) Therapeutic passes shall be provided as clinically indicated in the plan of care and as paired with community-based and facility-based interventions to promote discharge planning, community integration, and family engagement. Therapeutic passes include activities as listed in subdivision 2 d (13) of this section. Twenty-four therapeutic passes shall be permitted per individual, per admission, without authorization as approved by the treating physician and documented in the plan of care. Additional therapeutic passes shall require service authorization from DMAS. Any unauthorized therapeutic passes not approved by the provider or DMAS shall result in retraction for those days of service.

(12) Discharge planning shall begin at admission and continue throughout the individual's placement at the PRTF. The parent or legally authorized representative, the community services board (CSB), the family assessment planning team (FAPT) case manager, if appropriate, and the DMAS contracted care manager shall be involved in treatment planning and shall identify the anticipated needs of the individual and family upon discharge and identify the available services in the community. Prior to discharge, the PRTF shall submit an active discharge plan to the DMAS contractor for review. Once the DMAS contractor approves the discharge plan, the provider shall begin collaborating with the parent or legally authorized representative and the treatment team to identify behavioral health and medical providers and schedule appointments for service-specific provider intakes as needed. The PRTF shall request written permission from the parent or legally authorized representative to share treatment information with these providers and shall share information pursuant to a valid release. The PRTF shall request information from post-discharge providers to establish that the planning of services and activities has begun, shall establish that the individual has been enrolled in school, and shall provide individualized education program recommendations to the school if necessary. The PRTF shall inform the DMAS contractor of all scheduled appointments within 30 calendar days of discharge and shall notify the DMAS contractor within one business day of the individual's discharge date from the PRTF.

(13) Failure to perform any of the items as described in subdivisions 3 h (1) through 3 h (12) of this subsection up until the discharge of the individual shall result in a retraction of the per diem and all other contracted and coordinated service payments for each day of noncompliance.

i. The team developing the CIPOC shall meet the following requirements:

(1) At least one member of the team must have expertise in pediatric behavioral health. Based on education and experience, preferably including competence in child or adolescent psychiatry, the team must be capable of all of the following: assessing the individual's immediate and long-range therapeutic needs, developmental priorities,

and personal strengths and liabilities; assessing the potential resources of the individual's family or legally authorized representative; setting treatment objectives; and prescribing therapeutic modalities to achieve the CIPOC's objectives.

(2) The team shall include one of the following:

(a) A board-eligible or board-certified psychiatrist;

(b) A licensed clinical psychologist and a physician licensed to practice medicine or osteopathy; or

(c) A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases and a licensed clinical psychologist.

(3) The team shall also include one of the following: an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

4. Requirements for independent certification teams applicable to both therapeutic group homes and PRTFs:

a. The independent certification team shall certify the need for PRTF or therapeutic group home services and issue a certificate of need document within the process and timeliness standards as approved by DMAS under contractual agreement with the DMAS contractor.

b. The independent certification team shall be approved by DMAS through a memorandum of understanding with a locality or be approved under contractual agreement with the DMAS contractor. The team shall initiate and coordinate referral to the family assessment and planning team (FAPT) as defined in §§ 2.2-5207 and 2.2-5208 of the Code of Virginia to facilitate care coordination and for consideration of educational coverage and other supports not covered by DMAS.

c. The independent certification team shall assess the individual's and family's strengths and needs in addition to diagnoses, behaviors, and symptoms that indicate the need for behavioral health treatment and also consider whether local resources and community-based care are sufficient to meet the individual's treatment needs, as presented within the previous 30 calendar days, within the least restrictive environment.

d. The LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP, as part of the independent certification team, shall meet with an individual and the individual's parent or legally authorized representative within two business days from a request to assess the individual's needs and begin the process to certify the need for an out-of-home placement.

e. The independent certification team shall meet with an individual and the individual's parent or legally authorized representative within 10 business days from a request to certify the need for an out-of-home placement.

f. The independent certification team shall assess the treatment needs of the individual to issue a certificate of need (CON) for the most appropriate medically necessary services. The certification shall include the dated signature and credentials for each of the team members who rendered the certification. Referring or treatment providers shall not actively participate during the certification process but may provide supporting clinical documentation to the certification team.

g. The CON shall be effective for 30 calendar days prior to admission.

h. The independent certification team shall provide the completed CON to the facility within one calendar day of completing the CON.

i. The individual and the individual's parent or legally authorized representative shall have the right to freedom of choice of service providers.

j. If the individual or the individual's parent or legally authorized representative disagrees with the independent certification team's recommendation, the parent or legally authorized representative may appeal the recommendation in accordance with 12VAC30-110.

k. If the LMHP, as part of the independent certification team, determines that the individual is in immediate need of treatment, the LMHP shall refer the individual to an appropriate Medicaid-enrolled crisis intervention provider, crisis stabilization provider, or inpatient psychiatric provider in accordance with 12VAC30-50-226 or shall refer the individual for emergency admission to a PRTF or therapeutic group home under subdivision 4 m of this subsection and shall also alert the individual's managed care organization.

l. For individuals who are already eligible for Medicaid at the time of admission, the independent certification team shall be a DMAS-authorized contractor with competence in the diagnosis and treatment of mental illness, preferably in child psychiatry, and have knowledge of the individual's situation and service availability in the individual's local service area. The team shall be composed of at least one physician and one LMHP, including LMHP-S, LMHP-R, and LMHP-RP. An individual's parent or legally authorized representative shall be included in the certification process.

m. For emergency admissions, an assessment must be made by the team responsible for the comprehensive individual plan of care (CIPOC). Reimbursement shall only occur when a certificate of need is issued by the team responsible for the CIPOC within 14 calendar days

after admission. The certification shall cover any period of time after admission and before claims are made for reimbursement by Medicaid. After processing an emergency admission, the therapeutic group home, PRTF, or institution for mental diseases (IMD) shall notify the DMAS contractor within five calendar days of the individual's status as being under the care of the facility.

n. For all individuals who apply and become eligible for Medicaid while an inpatient in a facility or program, the certification team shall refer the case to the DMAS contractor for referral to the local FAPT to facilitate care coordination and consideration of educational coverage and other supports not covered by DMAS.

o. For individuals who apply and become eligible for Medicaid while an inpatient in the facility or program, the certification shall be made by the team responsible for the CIPOC and shall cover any period of time before the application for Medicaid eligibility for which claims are made for reimbursement by Medicaid. Upon the individual's enrollment into the Medicaid program, the therapeutic group home, PRTF, or IMD shall notify the DMAS contractor of the individual's status as being under the care of the facility within five calendar days of the individual becoming eligible for Medicaid benefits.

5. Service authorization requirements applicable to both therapeutic group homes and PRTFs:

a. Authorization shall be required and shall be conducted by DMAS using medical necessity criteria specified in this subsection.

b. An individual shall have a valid psychiatric diagnosis and meet the medical necessity criteria as defined in this subsection to satisfy the criteria for admission. The diagnosis shall be current, as documented within the past 12 months. If a current diagnosis is not available, the individual will require a mental health evaluation prior to admission by an LMHP affiliated with the independent certification team to establish a diagnosis and recommend and coordinate referral to the available treatment options.

c. At authorization, an initial length of stay shall be agreed upon by the individual and parent or legally authorized representative with the treating provider, and the treating provider shall be responsible for evaluating and documenting evidence of treatment progress, assessing the need for ongoing out-of-home placement, and obtaining authorization for continued stay.

d. Information that is required to obtain authorization for these services shall include:

(1) A completed state-designated uniform assessment instrument approved by DMAS;

(2) A certificate of need completed by an independent certification team specifying all of the following:

(a) The ambulatory care and Medicaid or FAPT-funded services available in the community do not meet the specific treatment needs of the individual;

(b) Alternative community-based care was not successful;

(c) Proper treatment of the individual's psychiatric condition requires services in a 24-hour supervised setting under the direction of a physician; and

(d) The services can reasonably be expected to improve the individual's condition or prevent further regression so that a more intensive level of care will not be needed;

(3) Diagnosis as defined in the DSM-5 and based on (i) an evaluation by a psychiatrist or LMHP that has been completed within 30 calendar days of admission or (ii) a diagnosis confirmed in writing by an LMHP after review of a previous evaluation completed within one year of admission;

(4) A description of the individual's behavior during the seven calendar days immediately prior to admission;

(5) A description of alternate placements and community mental health and rehabilitation services and traditional behavioral health services pursued and attempted and the outcomes of each service;

(6) The individual's level of functioning and clinical stability;

(7) The level of family involvement and supports available; and

(8) The initial plan of care (IPOC).

6. Continued stay criteria requirements applicable to both therapeutic group homes and PRTFs. For a continued stay authorization or a reauthorization to occur, the individual shall meet the medical necessity criteria as defined in this subsection to satisfy the criteria for continuing care. The length of the authorized stay shall be determined by DMAS. A current plan of care and a current (within 30 calendar days) summary of progress related to the goals and objectives of the plan of care shall be submitted to DMAS for continuation of the service. The service provider shall also submit:

a. A state uniform assessment instrument, completed no more than 30 business days prior to the date of submission;

b. Documentation that the required services have been provided as defined in the plan of care;

c. Current (within the last 14 calendar days) information on progress related to the achievement of all treatment and discharge-related goals; and

d. A description of the individual's continued impairment and treatment needs, problem behaviors, family engagement activities, community-based discharge planning and care coordination, and need for a residential level of care.

7. EPSDT services requirements applicable to therapeutic group homes and PRTFs. Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT. EPSDT services may involve service modalities not available to other individuals, such as applied behavioral analysis and neuro-rehabilitative services. Individualized services to address specific clinical needs identified in an EPSDT screening shall require authorization by a DMAS contractor. In unique EPSDT cases, DMAS may authorize specialized services beyond the standard therapeutic group home or PRTF medical necessity criteria and program requirements, as medically and clinically indicated to ensure the most appropriate treatment is available to each individual. Treating service providers authorized to deliver medically necessary EPSDT services in therapeutic group homes and PRTFs on behalf of a Medicaid-enrolled individual shall adhere to the individualized interventions and evidence-based progress measurement criteria described in the plan of care and approved for reimbursement by DMAS. All documentation, independent certification team, family engagement activity, therapeutic pass, and discharge planning requirements shall apply to cases approved as EPSDT PRTF or therapeutic group home service.

8. Inpatient psychiatric services shall be covered for individuals younger than 21 years of age 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 meet the requirements set forth in subdivision 7 of this subsection.

a. Inpatient psychiatric services shall be provided under the direction of a physician.

b. Inpatient psychiatric services shall be provided by (i) a psychiatric hospital that undergoes a state survey to determine whether the hospital meets the requirements for participation in Medicare as a psychiatric hospital as specified in 42 CFR 482.60 or is accredited by a national organization whose psychiatric hospital accrediting program has been approved by the Centers for Medicare and Medicaid Services (CMS); or (ii) a hospital with an inpatient psychiatric program that undergoes a state survey to determine whether the hospital meets the requirements for participation in Medicare as a hospital, as specified in 42 CFR part 482 or is accredited by a national accrediting organization whose hospital accrediting program has been approved by CMS.

c. Inpatient psychiatric 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.

d. PRTF 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 42 CFR 441.151 (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 service authorized and the treatment must meet DMAS requirements for clinical necessity.

e. The inpatient psychiatric benefit for individuals younger than 21 years of age shall include services that are provided 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 individual's discharge from inpatient status at the earliest possible time. The inpatient psychiatric 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 inpatient psychiatric facility who is licensed to prescribe drugs shall be considered the referral.

f. State freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order pharmacy services and emergency services. Private freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order the following 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) nonemergency transportation services; and

(viii) emergency services. (Emergency services means the same as is set forth in 12VAC30-50-310 B.)

~~f.~~ E. Mental health family support partners.

~~(1)~~ 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)~~ 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)~~ 3. Documentation of required activities shall be required as set forth in 12VAC30-130-5200 A, C, and E through J.

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

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

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

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

~~(6)~~ 6. Individuals 18 ~~through~~, 19, and 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)~~ 7. To qualify for continued mental health family support partners, medical necessity criteria shall continue to be met, and progress notes shall document the status of progress relative to the goals identified in the recovery, resiliency, and wellness plan.

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

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

~~(10)~~ 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 of this subsection. The recommendation shall be valid for no longer than 30 calendar days.

~~(11)~~ 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)~~ 12. The PRS shall be employed by or have a contractual relationship with the enrolled provider licensed for one of the following:

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

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

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

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

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

~~(f)~~ f. Outpatient psychiatric services provider.

~~(g)~~ 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)~~ 13. Only the licensed and enrolled provider as referenced in subdivision ~~5 f (12)~~ 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)~~ 14. Supervision of the PRS shall meet the requirements set forth in 12VAC30-50-226 B 7 l.

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

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

~~10.~~ I. Behavioral therapy services shall be covered for individuals younger than 21 years of age.

~~a.~~ 1. 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 and covered as remedial care under 42 CFR 440.130(d) to individuals younger than 21 years of age. Behavioral therapy includes applied behavioral analysis. Family 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 provided in the individual's home and community settings 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 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.~~ 2. 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. All services shall be provided in accordance with the ISP and clinical assessment summary.

~~c.~~ 3. 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~~ F. 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 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 individual's home and the larger community within which the individual resides. Covered behavioral therapy services shall include:

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

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

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

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

~~(5)~~ e. Training a family member in behavioral modification methods as established in 12VAC30-60-61 ~~H~~ F;

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

~~(7)~~ g. Care coordination.

~~C.~~ J. 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. 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. 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~~,~~ and 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 dressing changes, maintaining patent airways, medication ~~administration/monitoring~~ administration or 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 or developmental 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~~ professional develops a written plan for meeting the needs of the ~~child~~ individual, 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~~ Individuals 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~~ an individual'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~~ an individual 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~~ individual is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the ~~child's~~ individual's IEP. ~~Children~~ Individuals 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~~ an individual'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~~ individual 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~~ an individual is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

~~D.~~ K. 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.

12VAC30-50-226. Community mental health 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" or "ADLs" means personal care tasks such as bathing, dressing, toileting, transferring, and eating or feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Affiliated" means any entity or property in which a provider or facility has a direct or indirect ownership interest of 5.0% or more, or any management, partnership, or control of an entity.

"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. DMAS' designated BHSA shall be authorized to constitute, oversee, enroll, and train a provider network; perform service authorization; adjudicate claims; process claims; gather and maintain data; reimburse providers; perform quality assessment and improvement; conduct member outreach and education; resolve member and provider issues; and perform utilization management including care coordination for the provision of Medicaid covered behavioral health services. Such authority shall include entering into or terminating contracts with providers in accordance with DMAS authority pursuant to 42 CFR Part 1002 and § 32.1-325 D and E of the Code of Virginia. DMAS shall retain authority for and oversight of the BHSA entity or entities.~~

"Certified prescreener" means an employee of either the local community services ~~board/behavioral~~ board or behavioral health authority or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

~~"Clinical experience" means, for the purpose of rendering (i) mental health day treatment/partial hospitalization, (ii) intensive community treatment, (iii) psychosocial rehabilitation, (iv) mental health skill building, (v) crisis stabilization, or (vi) crisis intervention services, practical experience in providing direct services to individuals with diagnoses of mental illness or intellectual disability or the provision of direct geriatric services or special education services. Experience shall include supervised internships, supervised practicums, or supervised field experience. 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 established by DBHDS in the document titled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.~~

"Code" means the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

"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~~ consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Human services field" means the same as the term is defined by ~~DBHDS~~ the Department of Health Professions in the guidance document entitled ~~Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.~~ Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted November 3, 2017, revised February 9, 2018.

"Individual" means the patient, client, or recipient of services described in this section.

"Individual service plan" or "ISP" means a comprehensive and regularly updated treatment plan specific to the individual's unique treatment needs as identified in the service-specific provider intake. The ISP contains, but is not limited to, the individual's treatment or training needs, the individual's goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, the estimated timetable for achieving the goals and objectives, and an individualized discharge plan that describes transition to other appropriate services. The individual shall be included in the development of the ISP

and the ISP shall be signed by the individual. If the individual is a minor ~~child~~, the ISP shall also be signed by the individual's ~~parent/legal~~ parent or legal guardian. Documentation shall be provided if the individual, who is a minor child or an adult who lacks legal capacity, is unable or unwilling to sign the ISP.

"Individualized training" means instruction and practice in functional skills and appropriate behavior related to the individual's health and safety, instrumental activities of daily living skills, and use of community resources; assistance with medical management; and monitoring health, nutrition, and physical condition. The training shall be rehabilitative and based on a variety of incremental (or cumulative) approaches or tools to organize and guide the individual's life planning and shall reflect what is important to the individual in addition to all other factors that affect ~~his~~ the individual's functioning, including effects of the disability and issues of health and safety.

"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" is 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.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-child" or "QMHP-C" means the same as 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, including a "QMHP-trainee" as defined by the Department of Health Professions.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as defined in 12VAC35-105-20.

"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.

"Register" or "registration" means notifying DMAS or its contractor that an individual will be receiving services that do not require service authorization.

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

"Review of ISP" means that the provider evaluates and updates the individual's progress toward meeting the individualized service plan objectives and documents the outcome of this review. For DMAS to determine that these reviews are satisfactory and complete, the reviews shall (i) update the goals, objectives, and strategies of the ISP to reflect any change in the individual's progress and treatment needs as well as any newly identified problems; (ii) be conducted in a manner that enables the individual to participate in the process; and (iii) be documented in the individual's medical record no later than 15 calendar days from the date of the review.

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

"Service authorization" means the process to approve specific services for an enrolled Medicaid, FAMIS Plus, or FAMIS individual by a DMAS service authorization contractor prior to service delivery and reimbursement in

order to validate that the service requested is medically necessary and meets DMAS and DMAS contractor criteria for reimbursement. Service authorization does not guarantee payment for the service.

"Service-specific provider intake" means the same as defined in 12VAC30-50-130 and also includes individuals who are older than 21 years of age.

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

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

B. Mental health services. The following services, with their definitions, shall be covered: day treatment/partial hospitalization, psychosocial rehabilitation, crisis services, intensive community treatment (ICT), and mental health skill building. Staff travel time shall not be included in billable time for reimbursement. These services, in order to be covered, shall meet medical necessity criteria based upon diagnoses made by LMHPs who are practicing within the scope of their licenses and 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. These services are intended to be delivered in a ~~person-centered~~ person centered manner. The individuals who are receiving these services shall be included in all service planning activities. All services which do not require service authorization require registration. This registration shall transmit service-specific information to DMAS ~~or its contractor~~ in accordance with service authorization requirements.

1. Day treatment/partial hospitalization services shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial, and psychoeducational treatment modalities designed for individuals who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

a. Day treatment/partial hospitalization services shall be time limited interventions that are more intensive than outpatient services and are required to stabilize an individual's psychiatric condition. The services are delivered when the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community. The service-specific provider intake, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community.

b. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness 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:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that the individual requires repeated interventions or monitoring by the mental health, social services, or judicial system that have been documented; or

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

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and other less intensive services may achieve psychiatric stabilization.

d. Admission and services for time periods longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, psychiatrist, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or psychiatric clinical nurse specialist.

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

2. Psychosocial rehabilitation shall be provided at least two or more hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, education to teach the patient about the diagnosed mental illness and appropriate medications to avoid complication and relapse, and opportunities to learn and use independent living skills and to enhance social and interpersonal skills within a supportive and normalizing program structure and environment. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units

are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement. The service-specific provider intake, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals~~:~~ (i) who without these services would be unable to remain in the community or (ii) who meet at least two of the following criteria on a continuing or intermittent basis:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that repeated interventions documented by the mental health, social services, or judicial system are or have been necessary; or

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

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

3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. The service-specific provider intake, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service. The provision of this service to an individual shall be registered with either DMAS~~, DMAS contractors, or the BHSA~~ within one business day or the completion of the service-specific provider intake to avoid duplication of services and to ensure informed care coordination.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions documented by mental health, social services, or the judicial system are or have been necessary; or

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

b. The annual limit for crisis intervention is 720 units per year. A unit shall equal 15 minutes.

c. These services may only be rendered by an LMHP, an LMHP-supervisee, LMHP-resident, LMHP-RP, or a certified prescreener.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 weeks based on an initial service-specific provider intake and may be reauthorized for up to an additional 26 weeks annually based on written intake and certification of need by a licensed mental health provider (LMHP), shall be defined by 12VAC35-105-20 or LMHP-S, LMHP-R, and LMHP-RP and shall include medical psychotherapy, psychiatric assessment, medication management, and care coordination activities offered to outpatients outside the clinic, hospital, or office setting for individuals who are best served in the community. Authorization is required for Medicaid reimbursement.

a. To qualify for ICT, the individual must meet at least one of the following criteria:

(1) The individual must be at high risk for psychiatric hospitalization or becoming or remaining homeless due to mental illness or require intervention by the mental health or criminal justice system due to inappropriate social behavior.

(2) The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for co-occurring serious mental illness and substance use disorder and demonstrates a resistance to seek out and utilize appropriate treatment options.

b. A written, service-specific provider intake, as defined at 12VAC30-50-130, that documents the individual's eligibility and the need for this service must be completed prior to the initiation of services. This intake must be maintained in the individual's records.

c. An individual service plan shall be initiated at the time of admission and must be fully developed, as defined in this section, within 30 days of the initiation of services.

d. The annual unit limit shall be 130 units with a unit equaling one hour.

e. These services may only be rendered by a team that meets the requirements of 12VAC35-105-1370.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Services may be provided for up to a 15-day period per crisis episode following a face-to-face service-specific provider intake by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP. Only one unit of service shall be reimbursed for this intake. The provision of this service to an individual shall be registered with either DMAS~~, DMAS contractors, or the BHSA~~ within one business day of the completion of the service-specific provider intake to avoid duplication of services and to ensure informed care coordination.

a. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement.

b. The crisis stabilization program shall provide to individuals, as appropriate, psychiatric assessment including medication evaluation, treatment planning, symptom and behavior management, and individual and group counseling.

c. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of an individual who lives with family or other primary caregiver; (ii) the home of an individual who lives independently; or (iii) community-based programs licensed by DBHDS to provide residential services but which are not institutions for mental disease (IMDs).

d. This service shall not be reimbursed for (i) individuals with medical conditions that require hospital care; (ii) individuals with a primary diagnosis of substance abuse; or (iii) individuals with psychiatric conditions that cannot be managed in the community (i.e., individuals who are of imminent danger to themselves or others).

e. The maximum limit on this service is 60 days annually.

f. Services must be documented through daily progress notes and a daily log of times spent in the delivery of services. The service-specific provider intake, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for this service. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing and maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions documented by the mental health, social services, or judicial system are or have been necessary; or

(4) Exhibit difficulty in cognitive ability such that the individual is unable to recognize personal danger or significantly inappropriate social behavior.

g. These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-A, QMHP-C, QMHP-E or a certified prescreener.

6. Mental health skill-building services (MHSS) shall be defined as goal-directed training to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed. These services may be authorized up to six consecutive months as long as the individual meets the coverage criteria for this service. The service-specific provider intake, as defined at 12VAC30-50-130, shall document the individual's behavior and describe how the individual meets criteria for

this service. These services shall provide goal-directed training in the following areas in order to be reimbursed by Medicaid or the ~~BHSA~~ DMAS contractor: (i) functional skills and appropriate behavior related to the individual's health and safety, instrumental activities of daily living, and use of community resources; (ii) assistance with medication management; and (iii) monitoring of health, nutrition, and physical condition with goals towards self-monitoring and self-regulation of all of these activities. Providers shall be reimbursed only for training activities defined in the ISP and only where services meet the service definition, eligibility, and service provision criteria and this section. A review of MHSS services by an LMHP, LMHP-R, LMHP-RP, or LMHP-S shall be repeated for all individuals who have received at least six months of MHSS to determine the continued need for this service.

a. Individuals qualifying for this service shall demonstrate a clinical 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. Services are provided to individuals who require individualized goal-directed training in order to achieve or maintain stability and independence in the community.

b. Individuals ~~ages~~ 21 years of age and older shall meet all of the following criteria in order to be eligible to receive mental health skill-building services:

(1) The individual shall have one of the following as a primary mental health diagnosis:

(a) Schizophrenia or other psychotic disorder as set out in the DSM-5;

(b) Major depressive disorder;

(c) Recurrent Bipolar I or Bipolar II; or

(d) Any other serious mental health disorder that a physician has documented specific to the identified individual within the past year and that includes all of the following: (i) is a serious mental illness; (ii) results in severe and recurrent disability; (iii) produces functional limitations in the individual's major life activities that are documented in the individual's medical record; and (iv) requires individualized training for the individual in order to achieve or maintain independent living in the community.

(2) The individual shall require individualized goal-directed training in order to acquire or maintain self-regulation of basic living skills, such as symptom management; adherence to psychiatric and physical health medication treatment plans; appropriate use of social skills and personal support systems; skills to manage personal hygiene, food preparation, and the maintenance of personal adequate nutrition; money management; and use of community resources.

(3) The individual shall have a prior history of any of the following: (i) psychiatric hospitalization; (ii) either residential or nonresidential crisis stabilization; (iii) intensive community treatment (ICT) or program of assertive community treatment (PACT) services; (iv) placement in a psychiatric residential treatment facility ~~(RTC Level C)~~ (PRTF) as a result of decompensation related to the individual's serious mental illness; or (v) a temporary detention order (TDO) evaluation, pursuant to § 37.2-809 B of the Code of Virginia. This criterion shall be met in order to be initially admitted to services and not for subsequent authorizations of service. Discharge summaries from prior providers that clearly indicate (i) the type of treatment provided, (ii) the dates of the treatment previously provided, and (iii) the name of the treatment provider shall be sufficient to meet this requirement. Family member statements shall not suffice to meet this requirement.

(4) The individual shall have had a prescription for antipsychotic, mood stabilizing, or antidepressant medications within the 12 months prior to the service-specific provider intake date. If a physician or other practitioner who is authorized by his license to prescribe medications indicates that antipsychotic, mood stabilizing, or antidepressant medications are medically contraindicated for the individual, the provider shall obtain medical records signed by the physician or other licensed prescriber detailing the contraindication. This documentation shall be maintained in the individual's mental health skill-building services record, and the provider shall document and describe how the individual will be able to actively participate in and benefit from services without the assistance of medication. This criterion shall be met upon admission to services and shall not be required for subsequent authorizations of service. Discharge summaries from prior providers that clearly indicate (i) the type of treatment provided, (ii) the dates of the treatment previously provided, and (iii) the name of the treatment provider shall be sufficient to meet this requirement. Family member statements shall not suffice to meet this requirement.

c. Individuals ~~aged~~ 18 to 21 years of age shall meet all of the following criteria in order to be eligible to receive mental health skill-building services:

(1) The individual shall not be living in a supervised setting as described in § 63.2-905.1 of the Code of Virginia. If the individual is transitioning into an independent living situation, MHSS shall only be authorized for up to six months prior to the date of transition.

(2) The individual shall have at least one of the following as a primary mental health diagnosis~~.~~:

(a) Schizophrenia or other psychotic disorder as set out in the DSM-5;

(b) Major depressive disorder;

(c) Recurrent Bipolar I or Bipolar II; or

(d) Any other serious mental health disorder that a physician has documented specific to the identified individual within the past year and that includes all of the following: (i) is a serious mental illness or serious emotional disturbance; (ii) results in severe and recurrent disability; (iii) produces functional limitations in the individual's major life activities that are documented in the individual's medical record; and (iv) requires individualized training for the individual in order to achieve or maintain independent living in the community.

(3) The individual shall require individualized goal-directed training in order to acquire or maintain self-regulation of basic living skills such as symptom management; adherence to psychiatric and physical health medication treatment plans; appropriate use of social skills and personal support systems; skills to manage personal hygiene, food preparation, and the maintenance of personal adequate nutrition; money management; and use of community resources.

(4) The individual shall have a prior history of any of the following: (i) psychiatric hospitalization; (ii) either residential or nonresidential crisis stabilization; (iii) intensive community treatment (ICT) or program of assertive community treatment (PACT) services; (iv) placement in a psychiatric residential treatment facility ~~(RTC Level C)~~ as a result of decompensation related to the individual's serious mental illness; or (v) temporary detention order (TDO) evaluation pursuant to § 37.2-809 B of the Code of Virginia. This criterion shall be met in order to be initially admitted to services and not for subsequent authorizations of service. Discharge summaries from prior providers that clearly indicate (i) the type of treatment provided, (ii) the dates of the treatment previously provided, and (iii) the name of the treatment provider shall be sufficient to meet this requirement. Family member statements shall not suffice to meet this requirement.

(5) The individual shall have had a prescription for antipsychotic, mood stabilizing, or antidepressant medications, within the 12 months prior to the assessment date. If a physician or other practitioner who is authorized by his license to prescribe medications indicates that antipsychotic, mood stabilizing, or antidepressant medications are medically contraindicated for the individual, the provider shall obtain medical records signed by the physician or other licensed prescriber detailing the contraindication. This documentation of medication management shall be maintained in the individual's mental health skill-building services record. For individuals not prescribed antipsychotic, mood stabilizing, or antidepressant medications, the provider shall have documentation from the medication management physician describing how the individual will be able to actively participate in and benefit from services without the assistance of medication. This criterion shall be met in order to be initially admitted to services and not for subsequent authorizations of service. Discharge summaries from prior providers that clearly indicate (i) the type of treatment provided, (ii) the dates of the treatment previously provided, and (iii) the name of the treatment provider shall be sufficient to meet this requirement. Family member statements shall not suffice to meet this requirement.

(6) An independent clinical assessment, established in 12VAC30-130-3020, shall be completed for the individual.

d. Service-specific provider intakes shall be required at the onset of services and individual service plans (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 12VAC30-50-130.

e. The yearly limit for mental health skill-building services is 520 units. Only direct face-to-face contacts and services to the individual shall be reimbursable. One unit is 1 to 2.99 hours per day, and two units is 3 to 4.99 hours per day.

f. These services may only be rendered by an LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, QMHP-E, or QPPMH.

g. The provider shall clearly document details of the services provided during the entire amount of time billed.

h. The ISP shall not include activities that contradict or duplicate those in the treatment plan established by the therapeutic group home or assisted living facility. The provider shall coordinate mental health skill-building services with the treatment plan established by the group home or assisted living facility and shall document all coordination activities in the medical record.

i. Limits and exclusions.

(1) ~~Group~~ Therapeutic group home ~~(Level A or B)~~ and assisted living facility providers shall not serve as the mental health skill-building services provider for

individuals residing in the provider's respective facility. Individuals residing in facilities may, however, receive MHSS from another MHSS agency not affiliated with the owner of the facility in which they reside.

(2) Mental health skill-building services shall not be reimbursed for individuals who are receiving in-home residential services or congregate residential services through the Intellectual Disability Waiver or Individual and Family Developmental Disabilities Support Waiver.

(3) Mental health skill-building services shall not be reimbursed for individuals who are also receiving services under the Department of Social Services independent living program (22VAC40-151), independent living services (22VAC40-131 and 22VAC40-151), or independent living arrangement (22VAC40-131) or any Comprehensive Services Act-funded independent living skills programs.

(4) Mental health skill-building services shall not be available to individuals who are receiving treatment foster care (12VAC30-130-900 et seq.).

(5) Mental health skill-building services shall not be available to individuals who reside in intermediate care facilities for individuals with intellectual disabilities or hospitals.

(6) Mental health skill-building services shall not be available to individuals who reside in nursing facilities, except for up to 60 days prior to discharge. If the individual has not been discharged from the nursing facility during the 60-day period of services, mental health skill-building services shall be terminated and no further service authorizations shall be available to the individual unless a provider can demonstrate and document that mental health skill-building services are necessary. Such documentation shall include facts demonstrating a change in the individual's circumstances and a new plan for discharge requiring up to 60 days of mental health skill-building services.

(7) Mental health skill-building services shall not be available for residents of psychiatric residential treatment centers ~~(Level C facilities)~~ except for the intake code H0032 (modifier U8) in the seven days immediately prior to discharge.

(8) Mental health skill-building services shall not be reimbursed if personal care services or attendant care services are being received simultaneously, unless justification is provided why this is necessary in the individual's mental health skill-building services record. Medical record documentation shall fully substantiate the need for services when personal care or attendant care services are being provided. This applies to individuals who are receiving additional services through the Intellectual Disability Waiver (12VAC30-120-1000 et seq.), Individual and Family Developmental Disabilities Support Waiver (12VAC30-120-700 et seq.), the Elderly or Disabled with Consumer Direction Waiver (12VAC30-120-900 et seq.), and EPSDT services (12VAC30-50-130).

(9) Mental health skill-building services shall not be duplicative of other services. Providers shall be required to ensure that if an individual is receiving additional therapeutic services that there will be coordination of services by either the LMHP, LMHP-R, LMHP-RP, LMHP-S, QMHP-A, QMHP-C, QMHP-E, or QPPMH to avoid duplication of services.

(10) Individuals who have organic disorders, such as delirium, dementia, or other cognitive disorders not elsewhere classified, will be prohibited from receiving mental health skill-building services unless their physicians issue signed and dated statements indicating that the individuals can benefit from this service.

(11) Individuals who are not diagnosed with a serious mental health disorder but who have personality disorders or other mental health disorders, or both, that may lead to chronic disability shall not be excluded from the mental health skill-building services eligibility criteria provided that the individual has a primary mental health diagnosis from the list included in subdivision B 6 b (1) or B 6 c (2) of this section and that the provider can document and describe how the individual is expected to actively participate in and benefit from mental health skill-building services.

7. Mental health peer support services.

a. Mental health peer support services are peer recovery support services and are nonclinical, peer-to-peer activities that engage, educate, and support an individual's self-help efforts to improve health recovery, resiliency, and wellness. Mental health peer support services for adults is a person centered, strength-based, and recovery-oriented rehabilitative service for individuals 21 years of age or older provided by a peer recovery specialist successful in the recovery process with lived experience with a mental health disorder, who is trained to offer support and assistance in helping others in the recovery to reduce the disabling effects of a mental health disorder that is the focus of support. Services assist the individual with developing and maintaining a path to recovery, resiliency, and wellness. Specific peer support service activities shall emphasize the acquisition, development, and enhancement of recovery, resiliency, and wellness. Services are designed to promote empowerment, self-determination, understanding, and coping skills through mentoring and service coordination supports, as well as to assist individuals in achieving positive coping mechanisms for the stressors and barriers

encountered when recovering from their illnesses or disorders.

b. Under the clinical oversight of the LMHP making the recommendation for mental health support services, 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 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. 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, and the individual within 30 calendar days of the initiation of service. The PRS shall act as an advocate for the individual, encouraging the individual to take a proactive role in developing and updating goals and objectives in the individualized recovery planning.

c. Documentation of required activities shall be required as set forth in 12VAC30-130-5200 A, C, and E through J.

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

e. Individuals 21 years of age or older qualifying for mental health peer support services shall meet the following requirements:

(1) Require recovery-oriented assistance and support services for the acquisition of skills needed to engage in and maintain recovery; for the development of self-advocacy skills to achieve a decreasing dependency on formalized treatment systems; and to increase responsibilities, wellness potential, and shared accountability for the individual's own recovery.

(2) Have a documented mental health disorder diagnosis.

(3) Demonstrate moderate to severe functional impairment because of a diagnosis that interferes with or limits performance in at least one of the following domains: educational (e.g., obtaining a high school or college degree); social (e.g., developing a social support system); vocational (e.g., obtaining part-time or full-time employment); self-maintenance (e.g., managing symptoms, understanding his illness, living more independently).

f. To qualify for continued mental health peer support services, medical necessity criteria shall continue to be met, and progress notes shall document the status of progress relative to the goals identified in the recovery, resiliency, and wellness plan.

g. Discharge criteria from mental health peer support services is the same as set forth in 12VAC30-130-5180 E.

h. Mental health peer support services shall be rendered on an individual basis or in a group.

i. Prior to service initiation, a documented recommendation for mental health peer support services shall be made by a licensed mental health professional acting within the scope of practice under state law The recommendation shall verify that the individual meets the medical necessity criteria set forth in subdivision 7 e of this subsection. The recommendation shall be valid for no longer than 30 calendar days.

j. Effective July 1, 2017, a peer recovery specialist shall have the qualifications, education, experience, and certification established by DBHDS in order to be eligible to register with the 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 peer support services under the oversight of the LMHP making the recommendation for services and providing the clinical oversight of the recovery, resiliency, and wellness plan. The PRS shall be employed by or have a contractual relationship with an enrolled provider licensed for one of the following:

(1) Acute care general hospital licensed by the Department of Health.

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

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

(4) Outpatient psychiatric services provider.

(5) Rural health clinics and federally qualified health centers.

(6) Hospital emergency department services licensed by the Department of Health.

(7) 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 defined in this section or

12VAC30-50-420 for which the individual meets medical necessity criteria:

(a) Day treatment or partial hospitalization;

(b) Psychosocial rehabilitation;

(c) Crisis intervention;

(d) Intensive community treatment;

(e) Crisis stabilization;

(f) Mental health skill building; or

(g) Mental health case management.

k. Only the licensed and enrolled provider referenced in subdivision 7 j of this subsection shall be eligible to bill mental health peer support 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 to not to be in compliance with DMAS requirements.

l. Supervision of the PRS shall be required as set forth in the definition of "supervision" in 12VAC30-130-5160. Supervision of the PRS shall also meet the following requirements: the supervisor shall be under the clinical oversight of the LMHP making the recommendation for services, and the peer recovery specialist in consultation with his direct supervisor shall conduct and document a review of the recovery, resiliency, and wellness plan every 90 calendar days with the individual and the caregiver, as applicable. The review shall be signed by the PRS and the individual and, as applicable, the identified family member or caregiver. Review of the recovery, resiliency, and wellness plan means the PRS evaluates and updates the individual's progress every 90 days toward meeting the plan's goals and documents the outcome of this review in the individual's medical record. For DMAS to determine that these reviews are complete, the reviews shall (i) update the goals and objectives as needed to reflect any change in the individual's recovery as well as any newly identified needs, (ii) be conducted in a manner that enables the individual to actively participate in the process, and (iii) be documented by the PRS in the individual's medical record no later than 15 calendar days from the date of the review.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-50)

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, DSM-5, 2013, American Psychiatric Association

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists

Virginia Supplemental Drug Rebate Agreement Contract and Addenda

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2010, dated March 13, 2014 (http://www.dmas.virginia.gov/Content_atchs/dnt/VA_SFC_ORM_140313.pdf)

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~~Human Services and Related Fields Approved Degrees/Experience, Department of Behavioral Health and Developmental Services (rev. 5/13)~~

Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted on November 3, 2017, revised on February 9, 2018

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~~ or its contractor shall be fully substantiated throughout individuals' medical records.

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

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

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

E. 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. Utilization review requirements specific to community mental health services and residential treatment services, including therapeutic group homes and psychiatric residential treatment facilities (PRTFs), 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) license shall be either a full, annual, triennial, or conditional license. Providers must be enrolled with DMAS or ~~the BHSA~~ its contractor to be reimbursed. Once a health care entity has been enrolled as a provider, it shall maintain, and update periodically as DMAS or its contractor requires, a current Provider Enrollment Agreement for each Medicaid service that the provider offers.

2. Health care entities with provisional licenses 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~~ provider contract with DMAS or its contractor for a service prior to rendering that service.

4. ~~The behavioral health service authorization contractor~~ DMAS or its 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. For purposes of Medicaid reimbursement for services provided by staff in residency, the following terms shall be used after their signatures to indicate such status:

a. An LMHP-R shall use the term "Resident" after his signature.

b. An LMHP-RP shall use the term "Resident in Psychology" after his signature.

c. An LMHP-S shall use the term "Supervisee in Social Work" after his signature.

12VAC30-60-50. Utilization control: Intermediate ~~Care Facilities~~ care facilities for ~~the Mentally Retarded (ICF/MR)~~ persons with intellectual and developmental disabilities and ~~Institutions~~ institutions for ~~Mental Disease (IMD)~~ mental disease.

A. "Institution for mental disease" or "IMD" means the same as that term is defined in § 1905(i) of the Social Security Act.

B. With respect to each Medicaid-eligible resident in an ~~ICF/MR~~ intermediate care facility for persons with intellectual and developmental disabilities (ICF/ID) or an IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet ~~his~~ the resident's current health needs and promote ~~his~~ the resident's maximum physical well being; the necessity and desirability of ~~his~~ the resident's continued placement in the facility; and the feasibility of meeting ~~his~~ the resident's health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

~~B.~~ C. With respect to each ~~ICF/MR~~ ICF/ID or IMD, periodic ~~on-site~~ onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet ~~his~~ the resident's current health needs and promote ~~his~~ the resident's maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting ~~his~~ the resident's health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

~~C.~~ D. In order for reimbursement to be made to a facility for ~~the mentally retarded~~ persons with intellectual and developmental disabilities, the resident must meet criteria for placement in such facility as described in 12VAC30-60-360 and the facility must provide active treatment for ~~mental retardation~~ intellectual or developmental disabilities.

~~D.~~ E. In each case for which payment for nursing facility services for ~~the mentally retarded~~ persons with intellectual or developmental disabilities or institution for mental disease services is made under the State Plan:

1. ~~A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease.~~ A certificate of need shall be completed by an independent certification team according to the requirements of 12VAC30-50-130 D 5. Recertification shall occur at least every 60 calendar days by a physician, or by a physician assistant or nurse practitioner acting within their scope of practice as defined by state law and under the supervision of a physician. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

2. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state

law and under the supervision of a physician, must recertify for each applicant at least every ~~365~~ 60 calendar days that services are needed in a facility for ~~the mentally retarded~~ persons with intellectual and developmental disabilities or an institution for mental disease.

~~E.~~ F. When a resident no longer meets criteria for facilities for ~~the mentally retarded~~ persons with intellectual and developmental disabilities or for an institution for mental disease, or no longer requires active treatment in a facility for ~~the mentally retarded~~ persons with intellectual and developmental disabilities then the resident ~~must~~ shall be discharged.

~~F.~~ G. All services provided in an ~~IMD and in an ICF/MR~~ ICF/ID shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

H. All services provided in an IMD shall be provided with the applicable provider agreement and all documents referenced therein.

I. Psychiatric services in IMDs shall only be covered for eligible individuals younger than 21 years of age.

J. IMD services provided without service authorization from DMAS or its contractor shall not be covered.

K. Absence of any of the required IMD documentation shall result in denial or retraction of reimbursement.

L. In each case for which payment for IMD services is made under the State Plan:

1. A physician shall certify at the time of admission, or at the time the IMD is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in an IMD consistent with 42 CFR 456.160.

2. The physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, shall recertify at least every 60 calendar days that the individual continues to require inpatient services in an IMD.

3. Before admission to an IMD or before authorization for payment, the attending physician or staff physician shall perform a medical evaluation of the individual, and appropriate personnel shall complete a psychiatric and social evaluation as described in 42 CFR 456.170.

4. Before admission to an IMD or before authorization for payment, the attending physician or staff physician shall establish a written plan of care for each individual as described in 42 CFR 441.155 and 42 CFR 456.180.

M. It shall be documented that the individual requiring admission to an IMD who is younger than 21 years of age, that treatment is medically necessary, and that the necessity was identified as a result of an independent certification of need team review. Required documentation shall include the following:

1. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition 2013, American Psychiatric Association, and based on an evaluation by a psychiatrist completed within 30 calendar days of admission or if the diagnosis is confirmed, in writing, by a previous evaluation completed within one year within admission.

2. A certification of the need for services as defined in 42 CFR 441.152 by an interdisciplinary team meeting the requirements of 42 CFR 441.153 or 42 CFR 441.156 and the Psychiatric Treatment of Minors Act (§ 16.1-335 et seq. of the Code of Virginia).

N. The use of seclusion and restraint in an IMD shall be in accordance with 42 CFR 483.350 through 42 CFR 483.376. Each use of a seclusion or restraint, as defined in 42 CFR 483.350 through 42 CFR 483.376, shall be reported by the service provider to DMAS or its contractor within one calendar day of the incident.

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.

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~~ parent or 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 calendar days; or (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 psychiatric residential treatment facility ~~Level C~~ (PRTF)

services, (b) transitioning out of a therapeutic 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 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~~ and 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~~ therapeutic group home; (ii) regular foster home if the individual is currently residing with ~~his~~ the individual's 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~~ the individual's 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~~ psychiatric residential treatment 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.

"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 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 plan of care. 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 required to deliver the service. The content of each progress note shall corroborate the time or units billed. Progress notes shall be documented for each service that is billed.

"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. 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 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~~ parent or guardian within 30 calendar 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~~ the individual 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 7 a or 7 b of this ~~subdivision 7~~ subsection.

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~~ parent or guardian shall be available and in agreement to participate in the transition.

10. At least one ~~parent/legal~~ parent or 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 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~~ individual or 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~~ members or legal guardian or the individual with the provider, the provider shall discharge the individual. If the individual continues to need services, then a new ~~intake/admission~~ intake or 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 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 calendar days of the service discontinuation date. 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~~ the primary care provider 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. 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 criteria:

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; or (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's ~~emotional/behavioral~~ emotional or behavioral problems are so severe that ~~they~~ the children 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~~ parent or guardian within 30 calendar 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~~ this section.

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 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 calendar days of the service discontinuation date. 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~~ the individual's parent or legal guardian, shall inform the primary care provider of the ~~child's~~ the individual'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~~ parent or 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~~ intake or admission documentation shall be prepared and a new service authorization shall be required.

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

~~1. The staff ratio must be at least one to six during the day and at least 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 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 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. 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.~~ E. Utilization review of therapeutic ~~behavioral services~~ group home for children and adolescents younger than 21 years of age ~~(Level B)~~.

1. The staff ratio must be ~~at least one to four during the day and at least one to eight between 11 p.m. and 7 a.m.~~ approved by the Office of Licensure at the Department of Behavioral Health and Developmental Services. The clinical director ~~must~~ shall 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~~ shall be full time and ~~be a QMHP-C or QMHP-E with a bachelor's degree and at least one year's clinical experience~~ meet the requirements for a program director as defined in 12VAC35-46-350.

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

4. All therapeutic ~~behavioral~~ group home 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~~ a comprehensive individual plan of care as defined in 12VAC30-50-130, which shall be fully completed within 30 calendar days of authorization for Medicaid reimbursement.

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

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

8. If an individual receiving therapeutic ~~behavioral~~ group home services for children and adolescents younger than 21 years of age ~~(Level B)~~ is also receiving case management services, the therapeutic ~~behavioral~~ group home services provider must collaborate with the care coordinator/case manager by notifying him of the provision of ~~Level B~~ therapeutic group home services and the ~~Level B~~ therapeutic group home 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~~ parent or legally authorized representative, shall inform the primary care provider of the individual's receipt of ~~these Level B~~ therapeutic group home 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~~ parent or legally authorized representative 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 younger than 21 years of age (Level A) and therapeutic behavioral services for children and adolescents 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.~~ F. Utilization review of behavioral therapy services for ~~children~~ individuals younger than 21 years of age.

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), 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 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.

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. 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. 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 or a parent or other authorized caregiver identified in the ISP with the exception of treatment review processes described in subdivision 12 e of this subsection, care coordination, and clinical supervision.

h. Services provided by a local education agency.

i. Provider travel time.

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

11. If the individual is receiving targeted case management services under the ~~Medicaid state plan~~ State Plan (defined in 12VAC30-50-410 through ~~12VAC30-50-491~~ 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.

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 12 c of this subsection.

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

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-60)

Department of Medical Assistance Services Provider Manuals (https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManuals):

Virginia Medicaid Nursing Home Manual

Virginia Medicaid Rehabilitation Manual

Virginia Medicaid Hospice Manual

Virginia Medicaid School Division Manual

Development of Special Criteria for the Purposes of Pre-Admission Screening, Medicaid Memo, October 3, 2012, Department of Medical Assistance Services

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), copyright 2000, American Psychiatric Association

Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC-2R), Second Edition, copyright 2001, American Society on Addiction Medicine, Inc.

Medicaid Memo, Reissuance of the Pre-Admission Screening (PAS) Provider Manual, Chapter IV, November 22, 2016, Department of Medical Assistance Services

Medicaid Special Memo, Subject: New Service Authorization Requirement for an Independent Clinical Assessment for Medicaid and FAMIS Children's Community Mental Health Rehabilitative Services, dated June 16, 2011, Department of Medical Assistance Services

Medicaid Special Memo, Subject: Changes to Children Community Mental Health Rehabilitative Services - Children's Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services

Medicaid Special Memo, Subject: Changes to Community Mental Health Rehabilitative Services - Adult-Oriented Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services

Approved Degrees in Human Services and Related Fields for QMHP Registration, adopted November 3, 2017, revised February 9, 2018

Part XIV
Residential Psychiatric Treatment for Children and Adolescents (Repealed)

12VAC30-130-850. ~~Definitions.~~ (Repealed.)

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

~~"Active treatment" means implementation of a professionally developed and supervised individual plan of care that must be designed to achieve the recipient's discharge from inpatient status at the earliest possible time.~~

~~"Certification" means a statement signed by a physician that inpatient services in a residential treatment facility are or were needed. The certification must be made at the time of admission, or, if an individual applies for assistance while in a mental hospital or residential treatment facility, before the Medicaid agency authorizes payment.~~

~~"Comprehensive individual plan of care" or "CIPOC" means a written plan developed for each recipient in accordance with~~

12VAC30-130-890 to improve his condition to the extent that inpatient care is no longer necessary.

"Emergency services" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

"Individual" or "individuals" means a child or adolescent younger than 21 years of age who is receiving a service covered under this part of this chapter.

"Initial plan of care" means a plan of care established at admission, signed by the attending physician or staff physician, that meets the requirements in 12VAC30-130-890.

"Inpatient psychiatric facility" or "IPF" means a private or state-run freestanding psychiatric hospital or psychiatric residential treatment center.

"Recertification" means a certification for each applicant or recipient that inpatient services in a residential treatment facility are needed. Recertification must be made at least every 60 days by a physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician.

"Recipient" or "recipients" means the child or adolescent younger than 21 years of age receiving this covered service.

"RTC Level C" means a psychiatric residential treatment facility (Level C).

"Services provided under arrangement" means services including physician and other health care services that are furnished to children while they are in an IPF that are billed by the arranged practitioners separately from the IPF per diem.

12VAC30-130-860. Service coverage; eligible individuals; service certification. (Repealed.)

A. Residential treatment programs (Level C) shall be 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address the special mental health and behavioral needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including drugs), individual and group counseling, and family therapy necessary to treat the child.

B. Residential treatment programs (Level C) shall provide a total, 24 hours per day, specialized form of highly organized, intensive and planned therapeutic interventions that shall be utilized to treat some of the most severe mental, emotional, and behavioral disorders. Residential treatment is a definitive therapeutic modality designed to deliver specified results for a defined group of problems for children or adolescents for whom outpatient day treatment or other less intrusive levels of care are not appropriate, and for whom a protected, structured milieu is medically necessary for an extended period of time.

C. Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) and Community Based Services for Children and Adolescents under 21 (Level A) must be therapeutic services rendered in a residential type setting such as a group home or program that provides structure for daily activities, psychoeducation, therapeutic supervision and mental health care to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). The child or adolescent must have a medical need for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities.

D. Active treatment shall be required. Residential Treatment, Therapeutic Behavioral and Community-Based Services for Children and Adolescents under age 21 shall be designed to serve the mental health needs of children. In order to be reimbursed for Residential Treatment (Level C), Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community Based Services for Children and Adolescents under 21 (Level A), the facility must provide active mental health treatment beginning at admission and it must be related to the recipient's principle diagnosis and admitting symptoms. To the extent that any recipient needs mental health treatment and his needs meet the medical necessity criteria for the service, he will be approved for these services. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the recipients.

E. An individual eligible for Residential Treatment Services (Level C) is a recipient under the age of 21 years whose treatment needs cannot be met by ambulatory care resources available in the community, for whom proper treatment of his psychiatric condition requires services on an inpatient basis under the direction of a physician.

An individual eligible for Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) is a child, under the age of 21 years, for whom proper treatment of his psychiatric condition requires less intensive treatment in a structured, therapeutic residential program under the direction of a Licensed Mental Health Professional.

An individual eligible for Community Based Services for Children and Adolescents under 21 (Level A) is a child, under the age of 21 years, for whom proper treatment of his

psychiatric condition requires less intensive treatment in a structured, therapeutic residential program under the direction of a qualified mental health professional. The services for all three levels can reasonably be expected to improve the child's or adolescent's condition or prevent regression so that the services will no longer be needed.

F. In order for Medicaid to reimburse for Residential Treatment (Level C), Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community Based Services for Children and Adolescents under 21 (Level A), the need for the service must be certified according to the standards and requirements set forth in subdivisions 1 and 2 of this subsection. At least one member of the independent certifying team must have pediatric mental health expertise.

1. For an individual who is already a Medicaid recipient when he is admitted to a facility or program, certification must:

a. Be made by an independent certifying team that includes a licensed physician who:

(1) Has competence in diagnosis and treatment of pediatric mental illness; and

(2) Has knowledge of the recipient's mental health history and current situation.

b. Be signed and dated by a physician and the team.

2. For a recipient who applies for Medicaid while an inpatient in the facility or program, the certification must:

a. Be made by the team responsible for the plan of care;

b. Cover any period of time before the application for Medicaid eligibility for which claims for reimbursement by Medicaid are made; and

c. Be signed and dated by a physician and the team.

12VAC30-130-870. ~~Preauthorization.~~ (Repealed.)

A. Authorization for Residential Treatment (Level C) shall be required within 24 hours of admission and shall be conducted by DMAS or its utilization management contractor using medical necessity criteria specified by DMAS. At preauthorization, an initial length of stay shall be assigned and the residential treatment provider shall be responsible for obtaining authorization for continued stay.

B. DMAS will not pay for admission to or continued stay in residential facilities (Level C) that were not authorized by DMAS.

C. Information that is required in order to obtain admission preauthorization for Medicaid payment shall include:

1. A completed state designated uniform assessment instrument approved by the department.

2. A certification of the need for this service by the team described in 12VAC30-130-860 that:

a. The ambulatory care resources available in the community do not meet the specific treatment needs of the recipient;

b. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

c. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will not be needed.

3. Additional required written documentation shall include all of the following:

a. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV, effective October 1, 1996), including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation, Axis III (General Medical Conditions), Axis IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

b. A description of the child's behavior during the seven days immediately prior to admission;

c. A description of alternative placements tried or explored and the outcomes of each placement;

d. The child's functional level and clinical stability;

e. The level of family support available; and

f. The initial plan of care as defined and specified at 12VAC30-130-890.

D. Continued stay criteria for Residential Treatment (Level C): information for continued stay authorization (Level C) for Medicaid payment must include:

1. A state uniform assessment instrument, completed no more than 90 days prior to the date of submission;

2. Documentation that the required services are provided as indicated;

3. Current (within the last 30 days) information on progress related to the achievement of treatment goals. The treatment goals must address the reasons for admission, including a description of any new symptoms amenable to treatment;

4. Description of continued impairment, problem behaviors, and need for Residential Treatment level of care.

E. Denial of service may be appealed by the recipient consistent with 12VAC30-110-10 et seq.; denial of reimbursement may be appealed by the provider consistent

with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

F. DMAS will not pay for services for Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), and Community Based Services for Children and Adolescents under 21 (Level A) that are not prior authorized by DMAS.

G. Authorization for Level A and Level B residential treatment shall be required within three business days of admission. Authorization for services shall be based upon the medical necessity criteria described in 12VAC30-50-130. The authorized length of stay must not exceed six months and may be reauthorized. The provider shall be responsible for documenting the need for a continued stay and providing supporting documentation.

H. Information that is required in order to obtain admission authorization for Medicaid payment must include:

1. A current completed state designated uniform assessment instrument approved by the department. The state designated uniform assessment instrument must indicate at least two areas of moderate impairment for Level B and two areas of moderate impairment for Level A. A moderate impairment is evidenced by, but not limited to:

a. Frequent conflict in the family setting, for example, credible threats of physical harm.

b. Frequent inability to accept age-appropriate direction and supervision from caretakers, family members, at school, or in the home or community.

c. Severely limited involvement in social support; which means significant avoidance of appropriate social interaction, deterioration of existing relationships, or refusal to participate in therapeutic interventions.

d. Impaired ability to form a trusting relationship with at least one caretaker in the home, school or community.

e. Limited ability to consider the effect of one's inappropriate conduct on others, interactions consistently involving conflict, which may include impulsive or abusive behaviors.

2. A certification of the need for the service by the team described in 12VAC30-130-860 that:

a. The ambulatory care resources available in the community do not meet the specific treatment needs of the child;

b. Proper treatment of the child's psychiatric condition requires services in a community based residential program; and

c. The services can reasonably be expected to improve the child's condition or prevent regression so that the services will not be needed.

3. Additional required written documentation must include all of the following:

a. Diagnosis, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV, effective October 1, 1996), including Axis I (Clinical Disorders), Axis II (Personality Disorders/Mental Retardation), Axis III (General Medical Conditions), Axis IV (Psychosocial and Environmental Problems), and Axis V (Global Assessment of Functioning);

b. A description of the child's behavior during the 30 days immediately prior to admission;

c. A description of alternative placements tried or explored and the outcomes of each placement;

d. The child's functional level and clinical stability;

e. The level of family support available; and

f. The initial plan of care as defined and specified at 12VAC30-130-890.

I. Denial of service may be appealed by the child consistent with 12VAC30-110; denial of reimbursement may be appealed by the provider consistent with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

J. Continued stay criteria for Levels A and B:

1. The length of the authorized stay shall be determined by DMAS or its contractor.

2. A current Individual Service Plan (ISP) (plan of care) and a current (within 30 days) summary of progress related to the goals and objectives on the ISP (plan of care) must be submitted for continuation of the service.

3. For reauthorization to occur, the desired outcome or level of functioning has not been restored or improved, over the time frame outlined in the child's ISP (plan of care) or the child continues to be at risk for relapse based on history or the tenuous nature of the functional gains and use of less intensive services will not achieve stabilization. Any one of the following must apply:

a. The child has achieved initial service plan (plan of care) goals but additional goals are indicated that cannot be met at a lower level of care.

b. The child is making satisfactory progress toward meeting goals but has not attained ISP goals, and the goals cannot be addressed at a lower level of care.

c. The child is not making progress, and the service plan (plan of care) has been modified to identify more effective interventions.

d. There are current indications that the child requires this level of treatment to maintain level of functioning as evidenced by failure to achieve goals identified for therapeutic visits or stays in a nontreatment residential setting or in a lower level of residential treatment.

K. Discharge criteria for Levels A and B.

1. Reimbursement shall not be made for this level of care if either of the following applies:

a. The level of functioning has improved with respect to the goals outlined in the service plan (plan of care) and the child can reasonably be expected to maintain these gains at a lower level of treatment; or

b. The child no longer benefits from service as evidenced by absence of progress toward service plan goals for a period of 60 days.

12VAC30-130-880. ~~Provider qualifications.~~ (Repealed.)

A. Providers must provide all Residential Treatment Services (Level C) as defined within this part and set forth in 42 CFR Part 441 Subpart D.

B. Providers of Residential Treatment Services (Level C) must be:

1. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations;

2. A residential treatment program for children and adolescents licensed by DMHMRSAS that is located in a psychiatric unit of an acute general hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

3. A psychiatric facility that is (i) accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Quality and Leadership in Supports for People with Disabilities, or the Council on Accreditation of Services for Families and Children and (ii) licensed by DMHMRSAS as a residential treatment program for children and adolescents.

C. Providers of Community Based Services for Children and Adolescents under 21 (Level A) must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

D. Providers of Therapeutic Behavioral Services (Level B) must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

12VAC30-130-890. ~~Plans of care; review of plans of care.~~ (Repealed.)

A. All Medicaid services are subject to utilization review and audit. The absence of any required documentation may result in denial or retraction of any reimbursement.

B. For Residential Treatment Services (Level C) (RTS-Level C), an initial plan of care must be completed at admission and a Comprehensive Individual Plan of Care (CIPOC) must be completed no later than 14 days after admission.

C. Initial plan of care (Level C) must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the individual;

3. Treatment objectives with short-term and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the individual and a list of services provided under arrangement (see 12VAC30-50-130 for eligible services provided under arrangement) that will be furnished to the individual through the RTC Level C's referral to an employed or a contracted provider of services under arrangement, including the prescribed frequency of treatment and the circumstances under which such treatment shall be sought;

5. Plans for continuing care, including review and modification to the plan of care;

6. Plans for discharge; and

7. Signature and date by the physician.

D. The CIPOC for Level C must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and must reflect the need for inpatient psychiatric care;

2. Be developed by an interdisciplinary team of physicians and other personnel specified under subsection G of this section, who are employed by, or provide services to, patients in the facility in consultation with the individual and his parents, legal guardians, or appropriate others in whose care he will be released after discharge;

3. State treatment objectives that must include measurable short-term and long-term goals and objectives, with target dates for achievement;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis;

5. Include a list of services provided under arrangement (described in 12VAC30-50-130) that will be furnished to the individual through referral to an employee or a contracted provider of services under arrangement, including the prescribed frequency of treatment and the circumstances under which such treatment shall be sought; and

6. Describe comprehensive discharge plans and coordination of inpatient services and post-discharge plans with related community services to ensure continuity of care upon discharge with the individual's family, school, and community.

E. Review of the CIPOC for Level C. The CIPOC must be reviewed every 30 days by the team specified in subsection G of this section to:

1. Determine that services being provided are or were required on an inpatient basis; and

2. Recommend changes in the plan as indicated by the individual's overall adjustment as an inpatient.

F. The development and review of the plan of care for Level C as specified in this section satisfies the facility's utilization control requirements for recertification and establishment and periodic review of the plan of care, as required in 42 CFR 456.160 and 456.180.

G. Team developing the CIPOC for Level C. The following requirements must be met:

1. At least one member of the team must have expertise in pediatric mental health. Based on education and experience, preferably including competence in child psychiatry, the team must be capable of all of the following:

a. Assessing the individual's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;

b. Assessing the potential resources of the individual's family;

c. Setting treatment objectives; and

d. Prescribing therapeutic modalities to achieve the plan's objectives.

2. The team must include, at a minimum, either:

a. A board-eligible or board-certified psychiatrist;

b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or

c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

3. The team must also include one of the following:

a. A psychiatric social worker;

b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;

c. An occupational therapist who is licensed, if required by the state, and who has specialized training or one year of experience in treating mentally ill individuals; or

d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

H. The RTC Level C shall not receive a per diem reimbursement for any day that:

1. The initial or comprehensive written plan of care fails to include within three business days of the initiation of the service provided under arrangement:

a. The prescribed frequency of treatment of such service, or includes a frequency that was exceeded; or

b. All services that the individual needs while residing at the RTC Level C and that will be furnished to the individual through the RTC Level C referral to an employed or contracted provider of services under arrangement;

2. The initial or comprehensive written plan of care fails to list the circumstances under which the service provided under arrangement shall be sought;

3. The referral to the service provided under arrangement was not present in the individual's RTC Level C record;

4. The service provided under arrangement was not supported in that provider's records by a documented referral from the RTC Level C;

5. The medical records from the provider of services under arrangement (i.e., admission and discharge documents, treatment plans, progress notes, treatment summaries, and documentation of medical results and findings) (i) were not present in the individual's RTC Level C record or had not been requested in writing by the RTC Level C within seven days of discharge from or completion of the service or services provided under arrangement or (ii) had been requested in writing within seven days of discharge from or completion of the service or services provided under arrangement, but not received within 30 days of the request, and not re-requested;

6. The RTC Level C did not have a fully executed contract or employee relationship with an independent provider of services under arrangement in advance of the provision of such services. For emergency services, the RTC Level C shall have a fully executed contract with the emergency services provider prior to submission of the emergency service provider's claim for payment;

7. A physician's order for the service under arrangement is not present in the record; or

8. The service under arrangement is not included in the individual's CIPOC within 30 calendar days of the physician's order.

I. The provider of services under arrangement shall be required to reimburse DMAS for the cost of any such service provided under arrangement that was (i) furnished prior to receiving a referral or (ii) in excess of the amounts in the referral. Providers of services under arrangement shall be required to reimburse DMAS for the cost of any such services provided under arrangement that were rendered in the absence of an employment or contractual relationship.

J. For therapeutic behavioral services for children and adolescents under 21 (Level B), the initial plan of care must be completed at admission by the licensed mental health professional (LMHP) and a CIPOC must be completed by the LMHP no later than 30 days after admission. The assessment must be signed and dated by the LMHP.

K. For community-based services for children and adolescents under 21 (Level A), the initial plan of care must be completed at admission by the QMHP and a CIPOC must be completed by the QMHP no later than 30 days after admission. The individualized plan of care must be signed and dated by the program director.

L. Initial plan of care for Levels A and B must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;

2. A description of the functional level of the individual;

3. Treatment objectives with short-term and long-term goals;

4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; and

6. Plans for discharge.

M. The CIPOC for Levels A and B must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the individual's situation and must reflect the need for residential psychiatric care;

2. The CIPOC for both levels must be based on input from school, home, other health care providers, the individual and family (or legal guardian);

3. State treatment objectives that include measurable short-term and long-term goals and objectives, with target dates for achievement;

4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and

5. Describe comprehensive discharge plans with related community services to ensure continuity of care upon discharge with the individual's family, school, and community.

N. Review of the CIPOC for Levels A and B. The CIPOC must be reviewed, signed, and dated every 30 days by the QMHP for Level A and by the LMHP for Level B. The review must include:

1. The response to services provided;

2. Recommended changes in the plan as indicated by the individual's overall response to the plan of care interventions; and

3. Determinations regarding whether the services being provided continue to be required.

Updates must be signed and dated by the service provider.

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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 Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-135. Demonstration Waiver Services (repealing 12VAC30-135-100 through 12VAC30-135-360).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: August 21, 2019.

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Summary:

This action repeals the regulations for the Medicaid Children's Mental Health Waiver, a grant program designed to enable the Centers for Medicare and Medicaid Services to develop reliable cost and utilization data to evaluate the effectiveness of community-based service delivery models for children with serious emotional disturbances who require psychiatric residential treatment facility level of care, because of discontinuation of federal funding due to loss of federal authority for this program. The Department of Medical Assistance Services terminated this waiver effective September 30, 2017.

~~Part II~~
~~Children's Mental Health Waiver~~

12VAC30-135-100. ~~Definitions.~~ (Repealed.)

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

~~"Activities of daily living" or "ADLs" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. A client's degree of independence in performing these activities is a part of determining appropriate level of care and services.~~

~~"Agency directed model" means services provided by a participating provider and where the provider is responsible for hiring, training, supervising, and firing of the staff.~~

~~"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~"Approve" means the Department of Medical Assistance Services (DMAS) or a DMAS contracted entity authorizes a participating provider's request for services, on behalf of a client, as medically necessary and meeting DMAS criteria for reimbursement.~~

~~"Assessment" means a face to face meeting conducted to identify a client's physical, emotional, behavioral, and social strengths, preferences, and needs. Assessments are performed by a DMAS authorized provider prior to the development of the individualized service plan (ISP) and comprehensive service plan (CSP).~~

~~"Barrier crime" means those crimes as defined at § 32.1-162.9:1 or 37.2-416 of the Code of Virginia.~~

~~"Behavioral health authority" or "BHA" means the local agency, established by a city or county or combination of counties or cities or cities and counties under Chapter 1 (§ 37.2-100 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality or localities that it serves.~~

~~"Case management" means the assessing and planning of services; linking the client to services and supports identified in the comprehensive service plan (CSP); assisting the client directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the client; enhancing community integration; making collateral contacts to promote the implementation of the CSP and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the client and develops a supportive relationship that promotes the CSP.~~

~~"Case manager" means the individual on behalf of a DMAS participating provider possessing a combination of work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities, at the entry level to provide the services described, at 12VAC30-50-420 through 12VAC30-50-430 or 12VAC30-50-480 or 12VAC30-50-130 B 5 a for case management services. The case manager may be the provider of Intensive In Home Services or the Treatment Foster Care Case Manager or other provider as designated by DMAS.~~

~~"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.~~

~~"Child" means, for the purpose of this regulation, an individual under the age of 21 years.~~

~~"Client" means the person receiving the services.~~

~~"CMH waiver" means the Children's Mental Health § 1915(c) home and community-based services demonstration waiver.~~

~~"Community services board" or "CSB" means the local agency established by a city or county or combination of cities and/or counties under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.~~

~~"Community transition services" means services that are provided to individuals who are leaving the PRTF and have chosen to receive services in the community. Community transition services include assessment of the child and family; assistance with meeting the requirements of waiver enrollment; referral for Medicaid eligibility; developing a~~

community plan of care in coordination with the family, CSA (if involved), and other involved parties; identifying community service providers; and monitoring the initial transition to the community.

"Companion" means, for the purpose of these regulations, an individual who provides companion services.

"Companion services" means assistance with skill development and with understanding family interaction, behavioral interventions for support and safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. This service is available through both a consumer directed (CD) and agency directed delivery approach and shall not exceed eight hours in one day.

"Comprehensive Services Act" or "CSA" means a collaborative system of services and funding that is child-centered, family focused, and community based when addressing the strengths and needs of troubled and at risk youth and their families.

"Comprehensive service plan" or "CSP" means the overall service plan that addresses the total needs of the client in all life areas. The CSP incorporates the ISPs developed for each individual service. The CSP defines and describes the goals, objectives and expected outcomes of service(s). The client or family/caregiver, as appropriate, will be involved to the maximum extent possible in the development and revision of the CSP. The CSP includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need; (iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

"Consumer directed model" or "CD" means services for which the client or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer directed services facilitator" means the DMAS-enrolled provider who is responsible for supporting the client by ensuring the development and monitoring of the CD services individualized service plan (ISP), and completing ongoing review activities as required by DMAS for CD companion services and CD respite services.

"Deny" means DMAS or a DMAS contracted entity denies a participating provider's request for services, on behalf of a client, as not medically necessary or not meeting DMAS criteria for reimbursement.

"DMAS" means the Department of Medical Assistance Services or its contractors.

"DMAS staff" means individuals employed by DMAS.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DSM-IV" means the Diagnostic and Statistical Manual of Mental Disorders that is the standard classification of mental disorders used by mental health professionals.

"DSM-IV-TR" means the text revision of the DSM-IV, published in July 2000, which corrected errors identified in the DSM-IV and included numerous changes to the classification (i.e., disorders were added, deleted, and reorganized), to the diagnostic criteria sets, and to the descriptive text.

"DSS" means the Department of Social Services.

"Enroll" means that a client has been added to the CMH waiver after it has been determined that the client meets all of the eligibility requirements for the waiver.

"Environmental modifications" means physical adaptations to a client's home or primary place of residence or primary vehicle, which provide direct medical or remedial benefit to the client. These adaptations are necessary to ensure the health, welfare, and safety of the client, or enable the client to function with greater independence in the home. Without these adaptations, the client would require institutionalization in a psychiatric residential treatment facility (PRTF).

"EPSDT" means the "Early Periodic Screening, Diagnosis and Treatment" program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Family/caregiver" means the family, legal guardian, neighbor, friend, companion or co-worker, or any person who provides uncompensated care, training, guidance, companionship or support to a person served under this waiver.

"Family/caregiver training" means training and counseling services provided to families or caregivers of clients receiving services in the CMH waiver. Training includes instruction about treatment regimens and behavioral plans specified in the ISP, and shall include updates as necessary to safely maintain the client at home. Counseling may be provided to the family/caregiver to improve and develop the family's/caregiver's skills in dealing with life circumstances of parenting a child with special needs and help the client remain at home. All training/counseling will be provided on a face-to-face basis.

"Fiscal management service" or "FMS" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of clients who are receiving CD respite and companion services.

"Health, welfare, and safety standard" means that a client's right to receive a waiver service is dependent on a finding that the client needs the service, based on appropriate assessment criteria and a written CSP, and that services can be provided safely in the community.

"Home and community based waiver services" or "waiver services" means a variety of home and community based services reimbursed by DMAS as authorized pursuant to § 1915(c) of the Social Security Act designed to offer clients an alternative to institutionalization. Clients may be pre-authorized to receive one or more of these services either solely or in combination, based on the documented need for the service in order to discharge the client from a PRTF.

"Individualized service plan" or "ISP" means the specific service plan developed by the service provider related solely to the specific tasks required of that service provider. The client will be involved to the maximum extent possible in the development and revision of the ISP. The ISP helps to comprise the overall CSP. The ISP includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need; (iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

"In-home residential supports" means agency-directed services that increase or maintain personal self-sufficiency, and facilitate the client's achievement of community inclusion and remaining in the home. The supports may be provided in the client's residence or in community settings. Community living supports provides assistance to the family in the care of their child, while facilitating the client's independence and integration into the community. The service also includes communication and relationship building skills, and participation in leisure and community activities. These supports must be provided directly to, or on behalf of, the client enabling the client to attain or maintain his maximum potential. These supports may serve to reinforce skills or lessons taught in school, therapy, or other settings.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Legal guardian" means a person who has been legally authorized to take care of and make decisions for the client in order to protect the interests of a minor client or an adult who has been declared by the circuit court to be incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the client has been determined to be incapacitated.

"Level of care" means the psychiatric residential treatment facility (PRTF) criteria. Review of a client's level of care requires the case manager to assure that the client continues to meet the PRTF criteria.

"Licensed mental health professional" or "LMHP" means a clinician in the human services field as defined at 12VAC30-50-226.

"Participating provider" means a person, institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of a provider's request, on behalf of a client, for services until all required information is received by the preauthorization entity.

"Person-centered planning" means a process, directed by the client or family/caregiver, as appropriate, with assistance as needed from others involved in the care of the child. Person-centered planning shall be intended to identify the strengths, capacities, preferences, needs and desired outcomes of the client.

"Personal care agency" means a participating provider that renders services designed to prevent or reduce institutional care by providing eligible clients with companions and assistants who provide companion or respite services.

"Preauthorization" means the process to approve specific services for a client by a Medicaid enrolled provider prior to service delivery and reimbursement.

"Preauthorized" means that an individual's comprehensive service plan has been approved by DMAS or a DMAS-approved entity prior to commencement of the service by the service provider for provision and reimbursement of services.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the client to live successfully in the community without compensation for providing such care.

"Psychiatric residential treatment facility" or "PRTF" means a facility that provides 24-hour per day specialized, highly organized, intensive, and planned therapeutic interventions to children that are utilized to treat severe mental, emotional, and behavioral disorders.

"Qualified mental health professional" or "QMHP" means a clinician in the human services field as defined at 12VAC30-50-226.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite services to eligible clients for their caregivers.

"Respite services" means services provided to clients and their families to offer relief to unpaid caregivers. Respite

~~services will be provided in the client's home or place of residence, in the community, or a licensed respite facility, such as a group home. This service is available through both a CD and agency directed delivery approach.~~

~~"Screening" means the process to evaluate the medical, emotional, psychiatric, and social needs of clients referred for screening to determine client's eligibility to be discharged from a PRTF, and to authorize Medicaid funded community-based care for those clients who meet the CMH waiver eligibility criteria.~~

~~"Screener" means the entity or entities identified by DMAS that is responsible for performing screening for the CMH waiver.~~

~~"Serious emotional disturbance" or "SED" means a serious mental health problem in children ages birth through 21 that can be diagnosed under the DSM-IV-TR, or exhibited by all of the following: (i) problems in personality development and social functioning that have been exhibited over at least one year's time; and (ii) problems that are significantly disabling based upon the social functioning of most children that age; and (iii) problems that have become more disabling over time; and (iv) service needs that require significant intervention by more than one agency.~~

~~"Service provider" means the entity providing direct services to the client.~~

~~"Services facilitator" means the participating provider who is responsible for supporting the client by ensuring the development and monitoring of the CD Services ISP, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a CD model. These services include companion and respite services.~~

~~"State Plan for Medical Assistance" or "the Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.~~

~~"Therapeutic consultation" means services that provide expertise, training, and technical assistance by licensed professionals to assist family members, caregivers, and other service providers in supporting the client. This service includes the assessment of the client and family strengths, observation, and developing, with the family, a culturally sensitive ISP.~~

~~"Uniform Assessment Instrument" means the uniform assessment instrument, as designated by DMAS, used to measure functional outcomes for children. This tool is used by the screener as one component of its assessment and is used to inform but not dictate a level-of-care. The completion of this tool is required for children who participate in the CMH waiver. This tool is separate from the UAI used for long term care services in other home and community based services waivers.~~

12VAC30-135-110. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-120. ~~General coverage and requirements for Children's Mental Health Waiver services.~~ (Repealed.)

~~A. Waiver service populations. Home and community based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for clients under the age of 21 who have resided in a PRTF for at least 90 days and have been determined to continue to meet PRTF level of care, but with additional supports could reside in the community.~~

~~B. Required documentation, as identified by DMAS, for admission to the CMH waiver must be submitted to DMAS in order for the client to be enrolled. Upon determination by DMAS or a DMAS contracted entity that the client is appropriate for admission to the waiver, the case manager or screener will work with the client family/caregiver, the facility currently housing the client, and client/family/caregiver selected providers of community-based services to determine an appropriate transfer date.~~

~~C. Covered services.~~

~~1. Covered services shall include respite services (both CD and agency directed), in home residential supports, companion services (both CD and agency directed), family/caregiver training, environmental modifications, community transition services and therapeutic consultation.~~

~~2. These services shall be medically appropriate and necessary to maintain the client in the community. Federal waiver requirements provide that the overall costs of community care shall be no more than the overall costs that would have been incurred at the same level of service in the PRTF.~~

~~3. Waiver services shall not be furnished to clients who are inpatients of a hospital, nursing facility, intermediate care facility for persons with mental retardation, inpatient rehabilitation facility, or a PRTF consistent with federal waiver limitations.~~

~~4. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.~~

~~D. Requests for services. All requests for waiver services by CMH waiver clients will be reviewed under the health, welfare, and safety standard. This standard assures that a client's right to receive a waiver service is dependent on a finding that the client needs the service, based on appropriate assessment criteria and a written CSP and that services can safely be provided in the community. If the determination is made that these services cannot be safely provided to a client, then such clients shall not be approved for this waiver.~~

E. Medicaid reimbursement is available only for services provided when the client is present and when a qualified provider is providing the services. If the client is absent, such as in a hospitalization, no reimbursement will be provided for these waiver services.

F. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

G. Reevaluation of service need and utilization review. Reviews and updates of the CSP and level of care must meet the requirements as specified by DMAS. Providers shall meet the documentation requirements as specified by DMAS and DMAS will conduct quality management reviews for services rendered. Services failing to meet DMAS' quality management standards shall not be reimbursed or shall be subject to payment recoveries.

12VAC30-135-130. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-140. ~~Client eligibility requirements and intake process.~~ (Repealed.)

A. Virginia will evaluate clients for the CMH waiver as a separate assistance unit of one regardless of whether the child is living in the home with a parent or guardian, or siblings. Under this waiver, clients must meet the financial and nonfinancial Medicaid eligibility criteria and meet the PRTF institutional level of care criteria. DMAS shall be the single state agency authority responsible for the supervision and administration of the CMH waiver.

B. The following three criteria shall apply to all CMH waiver services:

1. Clients qualifying for CMH waiver services must have a demonstrated need for the service resulting in significant functional limitations. The need for the service must arise from the client having a SED and meeting the level of care for admission to a PRTF;

2. The services described in the ISP, and services as delivered, must be consistent with the Medicaid definition of each service; and

3. Services must be recommended based on a current assessment using a DMAS approved assessment instrument and a client's demonstrated need for each specific service.

C. Assessment, screening, authorization and enrollment in home and community-based care services.

1. To ensure that Virginia's CMH waiver serves only clients who would otherwise remain in a PRTF, home and community-based care services shall be considered only for clients who have resided in a PRTF for at least 90 days to ensure that the client's condition has been stabilized. Home and community-based care services shall be the critical service that enables the client to be discharged home rather than remaining in a PRTF. Clients must receive at least one CMH waiver service to remain in the waiver.

2. CMH waiver services must be determined by DMAS or a DMAS contracted entity to be an appropriate service alternative as defined in these regulations to remaining in a PRTF.

3. The client shall be recommended for CMH waiver services after completion of a comprehensive assessment of the client's needs and available supports. The completion of an assessment is mandatory before the client can be enrolled in the CMH waiver and Medicaid assumes payment responsibility for the waiver services.

4. The CMH waiver screener shall gather relevant medical, social, and psychological data and identify services to meet the client's needs in the community.

5. The client or family/caregiver, as appropriate, must be offered the choice of CMH waiver services or to remain in the PRTF. If the client chooses CMH waiver services, the client must also be offered the choice of waiver providers.

6. The screener shall explore alternative settings and services to provide the care needed by the client.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by DMAS or a DMAS contracted entity. Any CSP for home and community based care services must be preapproved by DMAS prior to Medicaid reimbursement for waiver services.

D. Screening for the CMH waiver.

1. Clients requesting CMH waiver services will be screened and will receive services on a first-come, first-served basis based on the availability of services in the community to support the client.

2. To be eligible for CMH waiver services, the client must:

a. Have been a resident of a PRTF for at least 90 days prior to applying for the CMH waiver;

b. Continue to meet the PRTF criteria described in 12VAC30-50-130;

c. Have services identified in the community to meet the client's needs;

d. Have a case manager assigned; and

e. Continue to meet Medicaid eligibility criteria.

E. Waiver approval process: authorizing and accessing services.

1. The screener is the entity responsible for assessing the client to determine if the client meets the criteria for admission to the CMH waiver.

2. If a client is a CSA client, the screener shall be the CSA representative. If the client is not a CSA client, the screener shall be the mental health or treatment foster care case manager.

3. Once the screener has determined that a client meets the eligibility criteria for CMH waiver services and the client or family/caregiver, as appropriate, has chosen this program, the client or family/caregiver will be provided with a list of available service providers. The client or family/caregiver, as appropriate, must be given a choice of providers if there is more than one provider available that can meet the client's needs. The client or family/caregiver, as appropriate, must also be given a choice of CD or agency directed respite and companion services, if the client is eligible for these services.

4. When all required information has been submitted to DMAS or its contractor for preauthorization, DMAS or the contractor will have 10 business days to review preauthorization requests. If the request is approved, the client will be sent written notification of enrollment in the CMH waiver and services may begin.

5. Only CMH waiver services authorized on the CSP by the screening entity according to DMAS policies may be reimbursed by DMAS.

6. All CSPs are subject to approval by DMAS.

F. Reevaluation of service need.

1. The comprehensive service plan (CSP).

a. The CSP shall be reviewed at intervals as determined by DMAS with the case manager, client, family/caregiver, service providers, consultants, and others involved in the care of the client based on relevant, current assessment data.

b. The case manager is responsible for continuous monitoring of the appropriateness of the client's services and revisions to the CSP as indicated by the changing needs of the client. The case manager must review the CSP at least every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be approved by the client or family/caregiver, as appropriate, and be pre-authorized by DMAS.

2. Review of level of care.

a. The case manager shall complete a reassessment annually, in coordination with the client, family/caregiver, service providers, consultants, and others involved in the care of the client, to ensure that the client continues to meet the PRTF criteria. The reassessment shall include the completion of the assessment instrument and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a mental health assessment for the client. The CSP shall be revised as appropriate.

b. A new mental health assessment shall be required whenever the current mental health assessment is no longer reflective of the client's current condition.

3. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the client.

4. Case managers will be required to conduct a minimum of quarterly face-to-face visits for all CMH waiver clients.

12VAC30-135-150. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-160. ~~Participation standards for home and community-based waiver services participating providers.~~ (Repealed.)

A. Requests for participation. Requests for participation from providers will be evaluated to determine whether the provider applicant meets the basic requirements for participation.

B. Providers approved for participation shall, at a minimum, perform the following activities:

1. For services that require licensure and/or certification, the provider must meet all licensure and/or certification requirements pursuant to 42 CFR 440.50 and 42 CFR 440.60 and any other applicable state or federal requirements;

2. The ability to document and maintain client case records in accordance with state and federal requirements;

3. Immediately notify DMAS in writing of any change in the information that the provider previously submitted to DMAS;

4. Assure freedom of choice to the client or family/caregiver, as appropriate, in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services are performed;

5. Assure the freedom of the client or family/caregiver, as appropriate, to refuse medical care, treatment and services;

6. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

7. Provide services and supplies to clients in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to clients with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

8. Provide services and supplies to clients of the same quality and in the same mode of delivery as are provided to the general public;

9. Submit charges to DMAS for the provision of services and supplies to clients in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS' payment methodology beginning with the onset of the client's authorization date for the waiver services;

10. Use program designated billing forms for submission of charges;

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location and agent, or trustee shall be within the Commonwealth of Virginia.

c. Documentation must be maintained that indicates the date, type of services rendered, and the number of hours/units provided, including the specific time frames.

12. Agree to furnish information on request and in the form requested by DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

14. Pursuant to 42 CFR Part 431, Subpart F, 12VAC30-20-90, and any other applicable state or federal law, hold confidential and use for authorized DMAS' purposes only all medical assistance information regarding clients served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS in conjunction with the cited laws. DMAS shall not disclose medical information to the public;

15. Notify DMAS of change of ownership, as defined in 42 CFR 489.18. When ownership of the provider changes, DMAS shall be notified at least 15 calendar days before the date of change;

16. For all facilities covered by § 1616(e) of the Social Security Act in which home and community-based waiver services will be provided, be in compliance with applicable standards that meet the requirements for board and care facilities;

17. Suspected abuse or neglect. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service client is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS protective services worker, to DMAS, and to DMHMRSAS Offices of Licensing and Human Rights as applicable;

18. Adhere to the provider participation agreement and the DMAS provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

D. Recipient choice of providers. The case manager must inform the client and family/caregiver of all available waiver providers in the community in which he desires services. The client and family/caregiver shall have the option of selecting the provider of his choice from among those providers who are able to meet his needs. A client's case manager shall not be the direct staff person or immediate supervisor of a staff person who provides CMH waiver services for the client.

E. Review of provider participation standards and renewal of contracts. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall

conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community based waiver services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's participation agreement, may result in a written request from DMAS for a corrective action plan that details the steps the provider must take and the length of time permitted to achieve full compliance with the plan to correct the deficiencies that have been cited.

F. Termination of provider participation. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may terminate at will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement in the event of a breach of the contract by the provider as specified in the DMAS participation agreement and also if the provider is no longer eligible to participate in the program. Such action precludes further payment by DMAS for services provided to clients subsequent to the date of termination.

G. Reconsideration of adverse actions. A provider shall have the right to appeal adverse action taken by DMAS to the extent such action is appealable under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Unless otherwise provided by law, adverse action includes, but shall not be limited to, termination of the provider participation agreement by DMAS and retraction of payments from the provider by DMAS for noncompliance with applicable law, regulation, policy, or procedure. All disputes regarding provider reimbursement or termination of the agreement by DMAS for any reason shall be resolved through administrative proceedings conducted at the office of DMAS in Richmond, Virginia, unless otherwise provided by law. These administrative proceedings and judicial review of such administrative proceedings shall be conducted pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia, and duly promulgated regulations. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act.

H. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

I. It is the responsibility of the case management provider to notify DMAS, in writing, when any of the following circumstances or events occurs:

1. Home and community based waiver services are implemented;

2. A client dies;

3. A client is discharged from all waiver services;

4. Any other circumstances (including hospitalization) that cause home and community based waiver services to cease or be interrupted for more than 30 days; or

5. A selection by the client of a different provider of case management services.

J. Changes or termination of services. The case manager shall authorize changes to a client's CSP based on the recommendations of the service provider and approval by the client or family/caregiver, as appropriate. Providers of direct service are responsible for modifying their ISP with the involvement of the client and family/caregiver and submitting ISPs to the case manager any time there is a change in the client's condition or circumstances that may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a change to the CSP and submit this change to the DMAS contracted preauthorization entity. The preauthorization entity will review and approve, deny, or pend for additional information the requested change to the client's CSP, and communicate this to the case manager.

K. In the case of reduction, termination, suspension or denial of home and community based waiver services by the preauthorization contractor or DMAS staff, clients shall be notified in writing of their appeal rights by the case manager pursuant to 12VAC30-110. The case manager shall have the responsibility to identify those clients who no longer meet the level of care criteria or for whom home and community based waiver services are no longer an appropriate alternative to residential placement. All CSPs are subject to approval by the Medicaid agency.

L. Termination of a provider participation agreement upon conviction of a felony. Section 32.1-325 of the Code of Virginia mandates that "any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider participation agreement. Reinstatement will be contingent upon provisions of state law. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

M. Changes or termination of care. It is the DMAS staff's responsibility to authorize any changes to a client's CSP based on the recommendations of the case manager. Participating providers providing direct service are responsible for modifying the ISP if the client/family/caregiver agrees. The provider must submit the ISP to the case manager any time there is a change in the client's condition or circumstances that may warrant a change in the amount or type of service rendered. The case manager

must review the need for a change and will sign the ISP if he agrees to the changes. The case manager must submit the revised CSP to the DMAS staff to receive approval for that change. DMAS staff has the final authority to approve or deny the requested change.

1. Nonemergency termination of home and community-based care services by the participating provider. The participating provider must give the client and case manager 10 business days' written notification of the intent to terminate services. The letter must provide the reasons for and the effective date of the termination. The effective date of services termination must be at least 10 days from the date of the termination notification letter. The client is not eligible for appeal rights in this situation and may pursue services from another provider.

2. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the client or provider agency personnel is endangered, the case manager, DMAS and the DMHMRSAS Offices of Licensing and Human Rights must be notified prior to termination of services. The 10-business day written notification period shall not be required. If appropriate, the local DSS protective services unit must be notified immediately.

3. DMAS termination of eligibility to receive home and community-based care services. DMAS has the ultimate responsibility for assuring appropriate placement of the client in home and community-based care services and the authority to terminate such services to the client for the following reasons:

a. The client no longer meets the institutional level of care criteria;

b. The client's environment does not provide for his health, safety, and welfare; or

c. An appropriate and cost-effective CSP cannot be developed.

N. Documentation requirements.

1. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. The case manager must retain the following documentation for quality management review by DMAS for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws, whichever period is longer.

a. The comprehensive assessment and all CSPs completed for the client;

b. All ISPs from every provider rendering waiver services to the client;

c. All supporting documentation related to any change in the ISP;

d. All related communication with the client, family/caregiver, consultants, providers, the screening entity, DMAS, DMHMRSAS, CSA, DSS and others involved in the care of the client; and

e. An ongoing log that documents all contacts made by the case manager related to the client.

2. Quality management review of client specific documentation must be conducted by DMAS staff. This documentation must contain, up to and including the last date of service, all of the following:

a. All assessments and reassessments;

b. All ISP's developed for that client and the written reviews;

c. Documentation of the date services were rendered and the amount and type of services rendered;

d. Appropriate data, contact notes or progress notes reflecting a client's status and, as appropriate, progress or lack of progress toward the goals on the ISP; and

e. Any documentation to support that services provided are appropriate and necessary to maintain the client in the home and in the community.

12VAC30-135-170. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-180. ~~Agency-directed companion services.~~ (Repealed.)

A. Service description. Companion services provide assistance with skill development and with understanding family interaction, behavioral interventions for support and safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. These include, but are not limited to, nonmedical care, socialization, or support to a client. Companions may assist or support the individual with such tasks as meal preparation, community access and activities, laundry and shopping, but companions do not perform these activities as discrete services. This service is provided in accordance with a therapeutic goal in the ISP and is not purely diversional in nature.

B. Criteria. In order to qualify for companion services, the client shall have demonstrated a need for assistance with IADLs, light housekeeping, community access, reminders for medication self-administration, or support to assure safety.

1. The inclusion of companion services in the ISP is appropriate only when the client cannot be left alone at any time due to the SED. The provision of companion services does not entail hands-on care.

2. Companion services shall not be covered if required only because the client does not have a telephone in the home or because the client does not speak English.

3. There must be a clear and present danger to the client as a result of being left unsupervised. Companion services cannot be authorized for clients whose only need for such services is for assistance exiting the home in the event of an emergency.

C. Service units and service limitations.

1. The amount of companion services time included in the ISP must be no more than is necessary to prevent the deterioration or injury to the client. In no event may the amount of time relegated solely to companion care on the ISP exceed eight hours per day, either separately or in any combination of CD and agency directed companion services.

2. The hours authorized are based on individual need. No more than three unrelated clients who are receiving waiver services and live in the same home are permitted to share the authorized work hours of the same companion.

3. Companion care will be authorized for family members/caregivers to sleep either during the day or during the night when the client cannot be left alone at any time due to his condition. Companion services must be necessary to ensure the client's safety if he cannot be left unsupervised due to health and safety concerns.

4. Companion services can be authorized when no one else is in the home who is competent to monitor the client for safety.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, companion service providers must meet the following qualifications:

1. Providers must either be licensed by DMHMRSAS as (i) a residential service provider, (ii) supportive in home residential service provider; (iii) day support service provider; or (iv) respite service provider; or meet the DMAS criteria to be a personal care/respite services provider.

2. Companions will be employees of providers that have provider participation agreements with DMAS to provide companion services. Providers are required to have a companion services supervisor to monitor companion services. The supervisor must be at least a QMHP.

3. The supervisor must conduct an initial home visit prior to initiating companion services to document the efficacy and appropriateness of services and to establish an ISP for the client. The supervisor must provide follow-up home visits to monitor the provision of services at a minimum of every three months or as often as needed. The client must be reassessed for services annually.

4. Required documentation in the client's record. The provider must maintain a record of each client receiving companion services. At a minimum these records must contain:

a. An initial assessment completed prior to the date services are initiated and subsequent reassessments and changes to the ISP;

b. An ISP containing the following elements:

(1) The client's strengths, desired outcomes, required or desired supports, or both;

(2) The services to be rendered and the schedule of services to accomplish the desired outcomes;

c. Documentation that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the client and family/caregiver.

d. All correspondence to the client, family/caregiver, case manager, DMAS, and DMHMRSAS;

e. Contacts made with family/caregiver, physicians, formal and informal service providers, and others involved in the care of the child;

f. The companion services supervisor must document in the client's record in a summary note following significant contacts with the companion and home visits with the client that occur at least quarterly:

(1) Whether companion services continue to be appropriate;

(2) Whether the plan is adequate to meet the client's needs or changes are indicated in the plan;

(3) The client and family/caregiver's satisfaction with the service;

(4) The presence or absence of the companion during the supervisor's visit;

(5) Any suspected abuse, neglect, or exploitation and to whom it was reported; and

(6) Any hospitalization or change in medical condition, functioning, or cognitive status.

g. In addition to the above requirements, the companion record must contain:

(1) The specific services delivered to the client by the companion, dated the day of service delivery, and the client's responses;

(2) The companion's arrival and departure times;

(3) The companion's weekly comments or observations about the client to include observations of the client's physical and emotional condition, daily activities, and responses to services rendered; and

(4) The weekly signature of the companion, or parent/caregiver, as appropriate, recorded and dated on the last day of service delivery for any given week to verify that companion services during that week have been rendered.

12VAC30-135-190. (Reserved.) (Repealed.)

12VAC30-135-200. Agency-directed respite services. (Repealed.)

A. Service description.

1. Respite services means services specifically designed to provide a temporary but periodic or routine relief to the primary unpaid caregiver of a client who is in need of specialized supervision due to a SED. Respite services include assistance with or monitoring of personal hygiene, nutritional support, safety, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

2. Respite services do not include either practical or professional nursing services or those practices regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate. This service does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

B. Criteria.

1. Respite services may only be offered to clients who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the client. Respite services are designed to focus on the need of the caregiver for temporary relief.

2. Respite services are supports for the family or other unpaid primary caregiver of a client. These services are furnished on a short-term basis because of the absence or need for relief of those unpaid caregivers normally providing the care for the clients.

C. Service units and service limitations.

1. Effective July 1, 2011, respite services shall be limited to a maximum of 480 hours per year. Clients who are receiving services through both the agency-directed and CD models shall not exceed 480 hours per year combined.

2. The unit of service is one hour.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, respite services providers must meet additional provider requirements:

1. Services shall be provided by:

a. A DMAS respite services provider; a DMHMRSAS-licensed residential services provider; or by a DMHMRSAS-licensed respite services provider or a DSS-approved foster care home for children provider.

b. For DMAS-enrolled respite services providers, the provider must employ or subcontract with a QMHP or LMHP to supervise all assistants. The supervisor must meet DMAS qualifications.

2. The QMHP/LMHP supervisor must make a home visit to conduct an initial assessment prior to the start of services for all clients requesting respite services. The supervisor must also perform any subsequent reassessments or changes to the ISP.

3. The QMHP/LMHP supervisor must make supervisory home visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 to 90 days.

a. When respite services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days, depending on the needs of the client.

b. When respite services are not received on a routine basis, but are episodic in nature, the supervisor is not required to conduct a supervisory visit every 30 to 90 days. Instead, the QMHP/LMHP supervisor must conduct the initial home visit with the respite care assistant immediately preceding the start of services and make a second home visit within the respite services period.

4. Based on continuing evaluations of the assistant's performance and client's needs, the QMHP/LMHP supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

5 The QMHP/LMHP supervisor must document in a summary note:

a. Whether respite services continue to be appropriate;

b. Whether the ISP is adequate to meet the client's needs or if changes need to be made;

c. The client's and family/caregiver's satisfaction with the service;

d. Any hospitalization or change in medical condition or functioning status;

e. Other services received and the amount; and

f. The presence or absence of the assistant in the home during the visit.

6. Qualification of assistants. The assistant must complete a training curriculum consistent with DMAS requirements. Prior to assigning an assistant to a client, the provider must obtain documentation that the assistant has satisfactorily completed a training program consistent with DMAS' requirements. DMAS requirements may be met in one of two ways:

a. Registration as a certified nurse aide; or

b. Graduation from an approved educational curriculum that offers certificates qualifying the student as a nursing assistant, home health aide, or meeting the paraprofessional criteria as established by 12VAC30-50-226.

E. Required documentation for the client's records. The provider must maintain all records of each client receiving services. These records must be separated from those of other nonwaiver services, such as home health services. These records will be reviewed periodically by DMAS staff. At a minimum these records must contain:

1. An initial assessment completed by the QMHP/LMHP supervisor prior to or on the date services are initiated.

2. Reassessments and any changes to the ISP made during the provision of services by the supervisor.

3. The most recent ISP and supporting documentaion that contains, at a minimum, the following elements:

a. The client's strengths, desired outcomes, and required or desired supports;

b. The client's and family's/caregiver's goals and objectives to meet the identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the goals and objectives; and

d. The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

4. The ISP goals, objectives, and activities must be reviewed by the supervisor quarterly, annually, and more often as needed and modified as appropriate. The results of these reviews must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the client and family/caregiver.

5. The QMHP/LMHP supervisor's notes recorded and dated during significant contacts with the respite services assistant and during supervisory visits to the client's home. The written summary of the supervision visits must include:

a. Whether services continue to be appropriate and whether the ISP is adequate to meet the needs or if changes are indicated in the ISP;

b. Any suspected abuse, neglect, or exploitation and to whom it was reported;

c. Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;

d. The client's and family/caregiver's satisfaction with the service;

e. Any hospitalization or change in medical condition or functioning status;

f. Other services received and their amount; and

g. The presence or absence of the assistant in the home during the supervisor's visit.

6. All correspondence to the client, family/caregiver, case manager, DMAS, DMHMRSAS, and CSA;

7. Significant contacts made with the client, family/caregivers, physicians, DMAS and others involved in the care of the client;

8. The assistant record must contain:

a. The specific services delivered to the client by the assistant, dated the day of service delivery, and the client's responses;

b. The assistant's arrival and departure times;

c. The assistant's weekly comments or observations about the client to include observations of the client's physical and emotional condition, daily activities, and responses to services rendered; and

d. The assistant's, client's and family/caregiver's weekly signatures with dates recorded on the last day of service delivery for any given week to verify that services during that week have been rendered.

e. Signatures, times, and dates shall not be placed on the assistant record prior to the last date of the week that the services are delivered.

9. All DMAS quality management review forms.

12VAC30-135-210. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-220. ~~Consumer directed companion and respite services.~~ (Repealed.)

A. Companion services.

1. Service description. Companion services provide assistance with skill development and with understanding family interaction, behavioral interventions for support and

safety, nonmedical care, nonmedical transportation, community integration, and rewarding appropriate behaviors. This service is available through both a consumer-directed (CD) and agency-directed delivery approach and shall not exceed eight hours in one day. These services include, but are not limited to, nonmedical care, socialization, or support to a client as well as supervision or monitoring to those clients who require the physical presence of an aide to ensure their safety during times when no other supportive individuals are available. This service is provided in accordance with a therapeutic goal in the ISP and is not purely diversional in nature.

2. Criteria.

a. The inclusion of companion services in the ISP is appropriate only when the client cannot be left alone at any time due to the SED. The provision of companion services does not entail hands-on care.

b. Companion services shall not be covered if required only because the client does not have a telephone in the home or because the client does not speak English.

c. There must be a clear and present danger to the client as a result of being left unsupervised. Companion services cannot be authorized for clients whose only need for companion services is for assistance exiting the home in the event of an emergency.

3. Service units and service limitations.

a. The amount of companion service time included in the ISP must be no more than eight hours per day, either separately or in any combination of CD or agency-directed companion services.

b. The hours authorized are based on individual need. No more than three unrelated individuals who are receiving waiver services and live in the same home are permitted to share the authorized work hours of the same companion.

c. Companion services may be authorized for family/caregivers to sleep either during the day or during the night when the client cannot be left alone at any time due to the client's condition. Companion aide services must be necessary to ensure the client's safety if the client cannot be left unsupervised due to health and safety concerns.

d. Companion services can be authorized when no one else is in the home who is competent to monitor the client for safety.

4. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, companion service providers must meet the following qualifications:

a. General companion qualifications. Companions must meet the following requirements:

(1) Be at least 18 years of age;

(2) Have the required skills to perform CD services as specified in the client's ISP;

(3) Possess basic reading, writing, and math skills;

(4) Be capable of following a care plan with minimal supervision;

(5) Submit to a criminal history record check within 15 days from the date of employment and, if the client is a minor, the Child Protective Services Central Registry. The companion will not be compensated for services provided to the client if the records check verifies the companion has been convicted of crimes described in § 32.1-162.9:1 or 37.2-416 of the Code of Virginia; or if the companion has a complaint confirmed by the DSS Child Protective Services Central Registry;

(6) Possess a valid social security number;

(7) Be willing to attend training at the client's and family/caregiver's request;

(8) Receive an annual tuberculosis (TB) screening; and

(9) Understand and agree to comply with the DMAS CMH waiver requirements as described in DMAS guidance documents.

b. Companions shall not be spouses, parents or caregivers. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care. Medicaid-reimbursed companion services shall not be provided by adult foster care providers or any other paid (regardless of the payment source) caregivers for a client residing in that home.

c. Family/caregivers who are reimbursed to provide companion services must meet the companion qualifications stated above.

d. Retention, hiring, and substitution of companions. Upon the client's request, the CD services facilitator shall provide the client or family/caregiver with a list of persons on the assistant registry who can provide temporary assistance until the assistant returns or the client is able to select and hire a new assistant. If a client or family/legal guardian is consistently unable to hire and retain the employment of an assistant to provide CD companion services, the services facilitator must contact the case manager and DMAS to transfer the client, at the client's choice, to a provider that provides Medicaid-funded agency-directed companion services. The CD

services facilitator will make arrangements with the case manager to have the client transferred.

B. Respite services.

1. Service description. Respite services include assistance with or monitoring of personal hygiene, nutritional support, safety, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver. For the purposes of this section, an assistant refers to the individual providing CD respite.

2. Criteria.

a. CD respite services may only be offered to clients who have a primary unpaid caregiver living in the home who requires temporary relief to avoid institutionalization of the client, and it is designed to focus on the need of the caregiver for temporary relief.

b. The inclusion of respite services in the ISP is appropriate only when the client cannot be left unsupervised due to the mental health condition at any time.

3. Service units and service limitations.

a. Effective July 1, 2011, CD respite services are limited to a maximum of 480 hours per year. Clients who are receiving services through both the agency directed and CD models shall not exceed 480 hours per year combined.

b. Clients can receive CD respite services and in home residential support services in their CSPs but cannot receive these services simultaneously.

c. For CD respite services, clients and family/legal guardian, as appropriate, will hire their own assistants and manage and supervise the assistant's performance.

4. Provider requirements.

a. The assistant must meet the following requirements:

(1) Be at least 18 years of age;

(2) Have the required skills to perform CD services as specified in the client's ISP;

(3) Possess basic reading, writing and math skills;

(4) Be capable of following a care plan with minimal supervision;

(5) Submit to a criminal history record check within 15 days from the date of employment, and if the client is a minor, the Child Protective Services Central Registry. The assistant will not be compensated for services provided to the client if the records check verifies the assistant has been convicted of crimes described in § 32.1-162.9:1 or 37.2-416 of the Code of Virginia or if the assistant has a complaint confirmed by the DSS Child Protective Services Central Registry;

(6) Possess a valid social security number;

(7) Be willing to attend training at the client's and family/caregiver's request;

(8) Receive periodic TB screening; and

(9) Understand and agree to comply with the DMAS CMH waiver requirements.

b. Assistants cannot be spouses, parents of minor children, or legally responsible relatives. Payment will not be made for services furnished by other family members unless there is objective written documentation as to why there are no other providers available to provide the care.

c. Family/caregivers who are reimbursed to provide respite services must meet the assistant qualifications.

d. Retention, hiring, and substitution of assistants. Upon the client's request, the CD services facilitation provider shall provide the client or family/legal guardian with a list of persons on the assistant registry who can provide temporary assistance until the assistant returns or the client is able to select and hire a new assistant. If a client is consistently unable to hire and retain the employment of an assistant to provide CD respite services, the CD services facilitator must contact the case manager and DMAS to transfer the client, at the client's choice, to a provider that provides Medicaid funded agency directed respite services. The CD services facilitator will make arrangements with the case manager to have the client transferred.

C. Service facilitation.

1. Clients choosing the CD option must receive support from a CD services facilitator and meet requirements for consumer direction as described in these regulations.

2. DMAS shall contract for the services of a Fiscal Management Service agent for CD companion and respite services. The FMS agent will be reimbursed by DMAS to perform certain tasks as an agent for the client/family/caregiver/employer who is receiving CD services. The FMS agent will handle the responsibilities for the client/family/caregiver/employer for employment taxes. The FMS agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

3. If a client is unable to direct his own care or is under 18 years of age, a family/legal guardian may serve as the employer on behalf of the client. Specific employer duties include checking of references of assistants/companions, determining that assistants/companions meet basic qualifications, training assistants/companions, supervising

the assistant's/companion's performance, and submitting timesheets to the FMS agent on a consistent and timely basis. There must be a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice. This is the responsibility of the client or family/legal guardian to establish.

4. Clients or family/legal guardians, as appropriate, choosing the CD model of service delivery must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with CD respite and companion services. The CD services facilitator is responsible for assessing the client's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the family/legal guardian on his responsibilities as an employer, and providing ongoing support of the CD model of services. The CD services facilitator cannot be the client, the client's case manager, direct service provider, spouse, parent or legally responsible party of the client who is a minor child, or a family/legal guardian employing the assistant/companion. If a client enrolled in CD services has a lapse in services for more than 90 consecutive days, DMAS must be notified and the CD services will be discontinued.

5. Either DMAS or its contractor shall provide the FMS for CD companion and respite services. The FMS agent will be reimbursed by DMAS to perform certain tasks as an agent for the client/employer who is receiving CD services. The FMS agent will handle the responsibilities of employment taxes for the client. The FMS agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

6. CD services facilitator qualifications. In addition to meeting the general conditions and requirements for home and community based services participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, the CD services facilitator must meet the following qualifications:

a. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator must operate from a physical business office and employ sufficient qualified staff to perform the needed ISP development and monitoring, reassessments, service coordination, and support activities as required. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

b. It is preferred that employees of the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a QMHP. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in the human services field working with persons with SED. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in clients with SED, or clients with other disabilities, as well as strategies to reduce limitations and health problems;

(b) Equipment and environmental modifications that may be required by clients with SED that reduce the need for human help and improve safety;

(c) Community based and other services, including PRTF placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide respite and companion services;

(d) CMH Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(e) CMH Waiver requirements, as well as the administrative duties for which the client and family/caregiver will be responsible;

(f) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning;

(g) Interviewing techniques;

(h) The client's and family/legal guardian's right to make decisions about, direct the provisions of, and control his CD respite and companion services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with clients, family/caregivers and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to clients with SED; and

(d) Identifying services within the established services system to meet the client's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format for clients who have visual impairments;

(b) Demonstrate a positive regard for clients and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with persons from diverse cultural backgrounds.

c. If the CD services facilitator is not a QMHP, the CD services facilitator must have QMHP consulting services available, either by a staffing arrangement or through a contracted consulting arrangement. The QMHP consultant is to be available as needed to consult with clients and CD services facilitators on issues related to the needs of the client.

7. Initiation of services and service monitoring.

a. The CD services facilitator must make an initial comprehensive home visit to collaborate with the client and family/caregiver to identify needs, assist in the development of the ISP with the client and provide employee management training. The initial comprehensive home visit is done only once upon the client's entry into the CD model of service regardless of the number or type of CD services that a client chooses to receive. If a client changes CD services facilitators, the new CD services facilitator must complete and bill for a reassessment visit in lieu of an initial comprehensive visit.

b. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months or, for respite services, either every six months or upon the use of 300 respite service hours, whichever comes first.

c. A reassessment of the client's level of care will occur six months after initial entry into the program, and subsequent reevaluations will occur at a minimum of every six months. During visits to the client's home, the CD services facilitator must observe, evaluate, and consult with the client and family/caregiver and document the adequacy and appropriateness of CD services with regard to the client's current functioning and cognitive status, medical, and social needs. The CD services facilitator's summary must include, but not necessarily be limited to:

(1) Whether CD respite services continue to be appropriate and medically necessary to prevent institutionalization;

(2) Whether the service is adequate to meet the client's needs;

(3) Any special tasks performed by the assistant/companion and the assistant's/companion's qualifications to perform these tasks;

(4) Client's or family/caregiver's satisfaction with the service;

(5) Hospitalization or change in medical condition, functioning, or cognitive status;

(6) Other services received and their amount; and

(7) The presence or absence of the companion/assistant in the home during the CD services facilitator's visit.

d. A face to face meeting with the client must be conducted at least every six months to reassess the client's needs and to ensure appropriateness of any CD services received by the client.

e. The CD services facilitator must be available to the client and family/caregiver by telephone.

f. The CD services facilitator must submit a criminal record check pertaining to the assistant/companion on behalf of the client and report findings of the criminal record check to the client and the program's FMS agent. If the client is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the client effective the date that the criminal record check confirms an assistant/companion was convicted of a barrier crime or if the assistant/companion has a founded complaint on record in the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the CD services facilitator within 15 calendar days of employment. The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review.

g. The CD services facilitator shall review and verify bi-weekly timesheets signed by the family/caregiver and the assistant/companion during the face to face visits or more often as needed to ensure that the number of ISP-approved hours is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the client to resolve discrepancies and must notify the FMS agent. If the client is consistently identified as

having discrepancies in his timesheets, the CD services facilitator must contact the case manager to resolve the situation. The CD services facilitator cannot verify timesheets for assistants/companions who have been convicted of a barrier crime or who have a founded complaint on record in the DSS Child Protective Services Registry and must notify the FMS agent.

h. The CD services facilitator must maintain records of each client as described in 12VAC30-135-120 and 12VAC30-135-160.

i. If a client/family/legal guardian is consistently unable to hire and retain the employment of an assistant/companion to provide CD respite or companion services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the client/family/caregiver other service options.

j. The family/legal guardian or client, as appropriate, must hire and train the assistants or companions and supervise the assistant's or companion's performance. The hours authorized are based on individual need.

8. Responsibilities as employer. The client or family/legal guardian, as appropriate, shall be the employer in this service and responsible for hiring, training, supervising, and firing assistants and companions. Specific duties include checking references of assistants/companions, determining that assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the CD services facilitator and FMS agent on a consistent and timely basis. The client must have an emergency back up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.

9. Required documentation in client's records. The CD services facilitator must maintain all records of each client. At a minimum these records must contain:

a. All copies of the ISP and all supporting documentation.

b. All DMAS quality management review forms.

c. CD services facilitator's notes contemporaneously recorded and dated during any contacts with the client and family/caregiver and during visits to the client's home.

d. All correspondence to the client, family/caregiver and to DMAS.

e. Reassessments made during the provision of services.

f. Records of contacts made with family/caregivers, physicians, DMAS, formal and informal service providers, and others involved in the care of the child.

g. All training provided to the assistant/companion or assistants/companions on behalf of the client.

h. All management training provided to the client or family/caregiver including the client's or family/caregiver's responsibility for the accuracy of the timesheets.

i. All documents signed by the client or family/caregiver that acknowledge the responsibilities of the services.

12VAC30-135-230. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-240. ~~Community transition services.~~ (Repealed.)

~~A. Service description.~~

~~Community transition services are provided to individuals who are leaving the PRTF and have chosen to receive services in the community. Community transition services include assessment of the child and family; assistance with meeting the requirements of waiver enrollment; referral for Medicaid eligibility; developing a community plan of care in coordination with the family, CSA (if involved), and other involved parties; identifying community service providers; and monitoring the initial transition to the community. Community transition services do not include monthly rental or mortgage expense; food, regular utility charges; and/or household appliances or items that are intended for purely diversional/recreational purposes.~~

~~Community transition services ensure the development, coordination, implementation, monitoring, and modification of comprehensive service plans; link recipients with appropriate community resources and supports; coordinate service providers; and monitor quality of care.~~

~~Community transition services may be provided in the PRTF, in the home, school or other community locations.~~

~~Community transition services may be provided up to three months prior to discharge from the PRTF and one month after discharge. The cost of community transition services is considered to be incurred and billable when the client leaves the PRTF and enters the Children's Mental Health Waiver.~~

~~B. Criteria. In order to qualify for these services, the client must be a resident of the PRTF and also have been identified as a possible participant in the Children's Mental Health Waiver.~~

~~C. Service units and service limitations. The unit of service shall be 15 minutes with a maximum of 80 units for each admission to the Children's Mental Health Waiver.~~

~~Services provided must be documented in records maintained by the community transition services provider. Documentation may be required to be submitted to DMAS.~~

~~D. Provider requirements. In addition to meeting the general conditions and requirements for home and community based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, professionals rendering community transition services must be DMAS enrolled providers of treatment foster care case management, DMAS enrolled providers of mental health case management services or be local CSA coordinators or FAPT members who meet the knowledge, skills, and abilities established for mental health case managers.~~

~~E. The following documentation is required:~~

~~1. A comprehensive services plan that contains at a minimum, the following elements:~~

~~a. Identifying information: client's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;~~

~~b. Identified services, provider names and individual service plans;~~

~~c. Targeted objectives, time frames, and expected outcomes.~~

~~2. Ongoing documentation of all contacts. All notes must include:~~

~~a. Specific details of the activities conducted;~~

~~b. Dates, locations, and times of service delivery;~~

~~c. CSP objectives addressed;~~

~~d. Services delivered as planned or modified;~~

~~e. Effectiveness of the strategies and client's and family/caregiver's satisfaction with service;~~

~~f. Client status; and~~

~~g. Outcomes and effectiveness of the comprehensive services plan.~~

~~F. When transition coordination services are completed, a final CSP must be discussed and forwarded to the ongoing case manager before the end of transition coordination. The transition services coordination provider must include:~~

~~1. Strategies utilized;~~

~~2. Objectives met;~~

~~3. Unresolved issues; and~~

~~4. Consultant recommendations.~~

12VAC30-135-250. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-260. ~~Environmental modifications.~~ (Repealed.)

~~A. Service description. Environmental modifications shall be defined as those physical adaptations to the home or to a vehicle, included in the client's ISP, that are necessary to ensure the health, welfare, and safety of the client, or that enable the client to function with greater independence in the home and without which the client would require continued institutionalization. Such adaptations include items to ensure the safety of the client, family/caregiver and the community. Modifications can be made to an automotive vehicle only if it is the primary vehicle being used by the client.~~

~~B. Service units and service limitations. Environmental modifications shall be available to clients who are receiving at least one other waiver service. A maximum limit of $5,000 may be reimbursed per ISP year. Costs for environmental modifications shall not be carried over from ISP year to ISP year and must be pre-authorized by DMAS or the contracted preauthorization entity for each ISP year. Excluded from this service shall be those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the client, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home are also excluded from this benefit. Modifications may not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act. All services shall be provided in accordance with applicable state or local building codes.~~

~~C. Criteria. In order to qualify for these services, the client must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered primarily in a client's primary home, primary vehicle used by the client or for the client by the family/caregiver, to specifically improve the client's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.~~

~~D. Provider requirements. In addition to meeting the general conditions and requirements for home and community based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, environmental modifications must be provided in accordance with all applicable federal, state or local building codes and laws by providers who have a provider participation agreement with DMAS. The provider must submit information regarding environmental modifications to the case manager. The following are provider documentation requirements that must be included in the client's record:~~

1. Supporting documentation that documents the need for the service, the process to obtain the service, and the time frame during which the services are to be provided;

2. Documentation of the time frame involved to complete the modification and the amount of services and supplies;

3. Any other relevant information regarding the modification;

4. Documentation of notification by the client and family/caregiver of satisfactory completion of the service; and

5. Instructions regarding any warranty, repairs, complaints, and servicing that may be needed.

12VAC30-135-270. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-280. ~~Family/caregiver training.~~ (Repealed.)

A. Service description. Family or caregiver training is the provision of identified training and education related to SED, community integration, family dynamics, stress management, behavioral interventions, and mental health to the family/caregiver. For purposes of this service, "family" is defined as the persons who live with, provide care to or support a waiver client, and may include a spouse, children, relatives, a legal guardian, foster family, or in-laws. "Family" does not include individuals who are employed to care for the client. All family/caregiver training must be included in the client's ISP.

B. Criteria. The need for the training and the content of the training in order to assist the family or caregivers with maintaining the client at home must be documented in the client's ISP. The training must be necessary in order to improve the family or caregiver's ability to provide care and support.

C. Service units and service limitations. Services are billed hourly and must be pre-authorized. Clients may receive up to 80 hours of family/caregiver training per ISP treatment year.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community based care participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, providers must meet the following qualifications:

1. Family/caregiver training must be provided on an individual basis, in small groups or through seminars and conferences provided by Medicaid approved or enrolled family and caregiver training providers;

2. Family/caregiver training must be provided by individuals with expertise who work for an agency with experience in or demonstrated knowledge of the training topic and who work for an agency or organization that has a provider participation agreement with DMAS to provide these services. Individuals must also have the appropriate licensure or certification as required for the specific professional field associated with the training area. Licensed professional counselors, licensed clinical social workers, licensed psychologists, licensed marriage and family therapists, and psychiatric clinical nurse specialists may enroll as individual practitioners with DMAS to provide family/caregiver training;

3. The family/caregiver training provider must submit documentation of all training to the case manager quarterly. This documentation must include:

a. All assessments and reassessments;

b. All supporting documentation developed for the client and the written reviews;

c. Documentation of the date services were rendered and the amount and type of services rendered; and

d. Any documentation to support that services provided are appropriate and necessary to maintain the client in the home and in the community.

12VAC30-135-290. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-300. ~~In-home residential support services.~~ (Repealed.)

A. Service description.

1. The service shall be designed to enable clients qualifying for the CMH Waiver to live in their homes and shall include (i) training and assistance in or reinforcement of functional skills and appropriate behavior related to a client's health and safety, personal care, ADLs, and use of community resources; (ii) assistance with medication management and monitoring the client's health, nutrition, and physical condition; (iii) life skills training; and (iv) cognitive rehabilitation.

2. This service provides assistance or specialized supervision provided primarily in a client's home or foster home to enable a client to acquire, retain, or improve the self-help, socialization, behaviors and adaptive skills necessary to reside successfully in home and community-based settings.

3. This service must be provided on a client-specific basis according to the ISP, supporting documentation, and service setting requirements.

4. Room and board and general supervision shall not be components of this service.

5. This service shall not be used solely to provide routine or emergency respite care for the family or caregivers with whom the client lives.

6. Medicaid reimbursement is available only for in-home residential support services provided when the client is

present and when a qualified provider is providing the services.

B. Criteria.

1. All clients must meet the CMH Waiver criteria in order for Medicaid to reimburse for in-home residential support services. The client shall have a demonstrated need for supports to be provided by staff who are paid by the in-home residential support provider.

2. A functional assessment must be conducted to evaluate each client in his home environment and community settings.

3. The supporting documentation must indicate the necessary amount and type of activities required by the client, the schedule of residential support services, and the total number of projected hours per week of waiver reimbursed residential support.

4. Routine supervision/oversight of direct care staff. To provide additional assurance for the protection or preservation of a client's health and safety, there are specific requirements for the supervision and oversight of direct care staff providing residential support as outlined below. All in-home residential support services must be provided under a DMHMRSAS license and include the following requirements:

a. An employee of the agency, typically by position, must be formally designated as the supervisor of each direct care staff person who is providing in-home residential support services.

b. The supervisor must have and document at least one supervisory contact per month with each staff person regarding service delivery and staff performance.

c. The supervisor must observe each staff person delivering services at least semi-annually. Staff performance and service delivery according to the ISP should be documented, along with evaluation and evidence of the client's and family/caregiver's satisfaction with service delivery by staff.

d. Providers of in-home residential supports must also have and document at least one monthly contact with the client and family/caregiver regarding satisfaction with services delivered by each staff person.

C. Service units and service limitations. In-home residential supports shall be reimbursed on an hourly basis for time the in-home residential support staff is working directly with the client. Total monthly billing cannot exceed the authorized amount in the ISP. The provider must maintain documentation of the date and times that services are provided, the specific services provided, and specific circumstances that prevented provision of all of the scheduled services, if applicable.

Service providers shall be reimbursed only for the amount and type of in-home residential support services included in the client's approved ISP. Services will not be reimbursed for a continuous 24-hour period.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, each in-home residential support service provider must be licensed by DMHMRSAS as a provider of supportive residential services. The provider must also have training in mental health and appropriate interventions, strategies, and support methods for persons with SED.

1. The ISP and ongoing documentation must be consistent with licensing regulations.

2. Documentation must confirm attendance and the amount of time services were provided and provide specific information regarding the client's response to various settings and supports as agreed to in the ISP objectives. Assessment results must be available in at least a daily note or a weekly summary. Data must be collected as described in the ISP, analyzed, summarized, and then clearly addressed in the CSP.

3. In addition to licensing requirements, persons providing residential support services are required to participate in training specified by DMAS in the characteristics of SED. The training shall include appropriate interventions, training strategies, and support methods for individuals with SED.

4. The ISP must be reviewed by the provider with the client or family/caregiver, as appropriate, and this review submitted to the case manager, at least semi-annually, with goals, objectives, and activities modified as appropriate.

5. Documentation must be maintained for supervision and oversight of all in-home residential support staff. All significant contacts must be documented.

6. Required documentation in the client's record. The provider agency must maintain records of each client receiving residential support services. Documentation must be completed and signed by the staff person designated to perform the supervision and oversight. At a minimum, these records must contain the following:

a. Date of contact or observation and the amount of time spent;

b. Person or persons contacted or observed;

c. A note regarding staff performance and ISP service delivery for monthly contact and semi-annual home visits;

d. Semi-annual observation documentation must also address client's and family/caregiver's satisfaction with service provision;

e. Any action planned or taken to correct problems identified during supervision and oversight;

f. A functional assessment conducted by the provider to evaluate each client in the residential environment and community settings; and

g. An ISP that must contain the following elements:

(1) The client's strengths, desired outcomes, required or desired supports, or both, and training needs;

(2) The client's or family/caregiver's goals and measurable objectives to meet the identified outcomes;

(3) The services to be rendered and the schedule of services to accomplish the goals, objectives, and desired outcomes;

(4) A timetable for the accomplishment of the client's goals and objectives;

(5) The estimated duration of the client's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

h. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with and approved by the client and family/caregiver.

12VAC30-135-310. ~~(Reserved.)~~ (Repealed.)

12VAC30-135-320. ~~Therapeutic consultation.~~ (Repealed.)

A. Service description.

1. Therapeutic consultation is available through the CMH Waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, therapeutic recreation, rehabilitation, speech/language therapy, professional counseling, marriage and family therapy, medicine, psychiatric clinical nurse specialists, and psychiatric nurse practitioners. Behavioral consultation performed by these individuals may also be a covered waiver service. These services may be provided, based on the client's ISP, for those clients for whom specialized consultation is clinically necessary to enable their utilization of waiver services.

2. Therapeutic consultation provides expertise, training and technical assistance for any of the specialty providers listed above to assist family members, caregivers, and other service providers in supporting the client. The specialty areas are (i) psychology, (ii) behavioral consultation, (iii) therapeutic recreation, (iv) speech and language pathology, and (v) occupational therapy. The need for any of these services is based on the client's ISP and provided to those clients for whom specialized consultation is clinically necessary and who have additional challenges restricting their ability to function in the community. Therapeutic consultation services may be provided in the client's home, and in appropriate community settings and are intended to facilitate implementation of the individual's and family/caregiver's desired outcomes as identified in his ISP.

3. Therapeutic consultation services may be provided in in-home residential or treatment support settings or in office settings in conjunction with another service. Behavioral consultation may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Therapeutic consultation service providers are reimbursed according to the amount and type of service authorized in the ISP based on an hourly fee-for-service rate.

B. Criteria. In order to qualify for these services, the client shall have a demonstrated need for consultation in any of these services. Documented need must indicate that the ISP cannot be implemented effectively and efficiently without such consultation from this service.

1. The client's therapeutic consultation supporting documentation must clearly reflect the client's needs, as documented in the assessment, for specialized consultation provided to family/caregivers and providers in order to implement the ISP effectively.

2. Therapeutic consultation services may not include direct therapy provided to waiver clients or monitoring activities, and may not duplicate the activities of other services that are available to the client through the State Plan for Medical Assistance.

C. Service units and service limitations. The unit of service shall equal one hour. The services must be explicitly detailed in the ISP or supporting documentation. Travel time, written preparation, and telephone communication are not billable as separate items. Therapeutic consultation may not be billed solely for purposes of monitoring.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-135-120 and 12VAC30-135-160, professionals rendering therapeutic consultation services, including behavioral consultation services, shall meet all applicable state or national licensure, endorsement or certification requirements. Behavioral consultation may be performed by professionals based on the

professionals' work experience, education, and demonstrated knowledge, skills, and abilities.

The following documentation is required for therapeutic consultation:

1. ISP, that contains at a minimum, the following elements:

a. Identifying information: client's name and Medicaid number; provider name and provider number; responsible person and telephone number; effective dates for supporting documentation; and semi-annual review dates, if applicable;

b. Targeted objectives, time frames, and expected outcomes;

c. Specific consultation activities; and

d. The expected outcomes.

2. A written support plan detailing the recommended interventions or support strategies for providers and family/caregivers to use to better support the client in the service.

3. Ongoing documentation of consultative services rendered in the form of contact by contact or monthly notes that identify each contact. All monthly, quarterly, semi-annual and annual notes must include:

a. Specific details of the activities conducted;

b. Dates, locations, and times of service delivery;

c. Supporting documentation objectives addressed;

d. Services delivered as planned or modified;

e. Effectiveness of the strategies and client's and family/caregiver's satisfaction with service;

f. Client status; and

g. Consultation outcomes and effectiveness of support plan.

4. If consultation services extend less than three months, the provider must forward monthly contact notes or a summary of them to the case manager.

5. If the consultation services extend three months or longer, written quarterly reviews must be completed by the service provider and are to be forwarded to the case manager. Any changes to the ISP must be reviewed with the client and family/caregiver.

6. Semi-annual reviews are required by the service provider if consultation extends three months or longer and are to be forwarded to the case manager.

7. If the consultation service extends beyond one year, the ISP must be reviewed by the provider with the client and family/caregiver and the case manager. The written review must be submitted to the case manager, at least annually, or more often as needed.

8. A written support plan, detailing the interventions and strategies for staff, family, or caregivers to use to better support the client in the service.

9. A final disposition summary must be forwarded to the case manager within 30 days following the end of this service and must include:

a. Strategies utilized;

b. Objectives met;

c. Unresolved issues; and

d. Consultant recommendations.

12VAC30-135-340. Reevaluation of service need and quality management review. (Repealed.)

A. The comprehensive service plan (CSP).

1. The CSP shall be developed by the case manager in coordination with others involved in the care of the client based on relevant, current assessment data. The CSP process determines the services to be rendered to clients, the frequency of services, the type of service provider, and a description of the services to be offered. All CSPs developed by the case manager are subject to approval by DMAS.

2. The case manager shall be responsible for continuous monitoring of the appropriateness of the client's CSP and revisions to the CSP as indicated by the changing needs of the client. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The DMAS staff will review the CSP every 12 months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by DMAS.

B. Review of level of care.

1. The case manager must complete an annual comprehensive reassessment, in coordination with the individual, family/caregivers and service providers. If warranted, the case manager will coordinate a medical examination and a mental health evaluation for each waiver client. The reassessment must include an update of the assessment instrument and any other appropriate assessment data.

2. Medical examinations must be completed according to the recommended frequency and periodicity of the EPSDT program.

3. The mental health assessment for clients must reflect the current psychological status (diagnosis) and adaptive level

~~of functioning. A new mental health assessment shall be required whenever the current mental health assessment is no longer reflective of the child's current condition.~~

~~C. Documentation required.~~

~~The case management agency must maintain the following documentation for review by the DMAS staff for each waiver client:~~

~~1. All CSPs, assessment summaries, and supporting documentation completed for the client and retained for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws; whichever period is longer. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years;~~

~~2. All individual providers' ISPs from any provider rendering waiver services to the client and all supporting documentation related to any change in the ISPs;~~

~~3. All supporting documentation related to any change in the CSP;~~

~~4. All related communication with the providers, client, consultants, DMHMRSAS, CSA, DMAS, DSS, DRS; and others involved in the care of the child; and~~

~~5. An ongoing log that documents all contacts made by the case manager related to the waiver client.~~

~~6. All supporting documentation developed for the client and retained for a period of not less than six years from each client's last date of service or as provided by applicable state or federal laws, whichever period is longer. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years;~~

~~7. An attendance log that documents the date services were rendered and the amount and type of services rendered; and~~

~~8. Appropriate progress notes reflecting client's status and, as appropriate, progress toward the goals on the CSP.~~

12VAC30-135-360. ~~Sunset provision.~~ (Repealed.)

~~Consistent with federal requirements applicable to this § 1915(c) demonstration waiver, these regulations shall expire effective with the termination of the federally approved waiver.~~

VA.R. Doc. No. R19-5695; Filed June 26, 2019, 3:46 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Proposed Regulation

Titles of Regulations: **18VAC41-50. Tattooing Regulations (amending 18VAC41-50-10 through 18VAC41-50-40, 18VAC41-50-80, 18VAC41-50-100 through 18VAC41-50-130, 18VAC41-50-150, 18VAC41-50-160, 18VAC41-50-180, 18VAC41-50-230, 18VAC41-50-250, 18VAC41-50-280, 18VAC41-50-290, 18VAC41-50-360, 18VAC41-50-400, 18VAC41-50-420; adding 18VAC41-50-91, 18VAC41-50-92, 18VAC41-50-93; repealing 18VAC41-50-50, 18VAC41-50-60, 18VAC41-50-90, 18VAC41-50-240, 18VAC41-50-260, 18VAC41-50-270, 18VAC41-50-320, 18VAC41-50-340, 18VAC41-50-350).**

18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-10 through 18VAC41-60-40, 18VAC41-60-80, 18VAC41-60-110, 18VAC41-60-120, 18VAC41-60-140, 18VAC41-60-190, 18VAC41-60-220; repealing 18VAC41-60-50, 18VAC41-60-60).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

August 12, 2019 - 1 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 4, Richmond, Virginia 23233

Public Comment Deadline: September 20, 2019.

Agency Contact: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia authorizes the board to promulgate regulations. The section states, in part, that the board has the power and duty to promulgate regulations that are necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board.

Sections 54.1-703, 54.1-704.1, and 54.1-704.2 of the Code of Virginia require board-issued licenses for tattooists and body piercers, tattoo parlors and body-piercing salons, and tattooing and body-piercing schools.

Purpose: The board seeks to amend its current regulations to ensure they are as minimally invasive and burdensome as possible in order to assist in providing an environment with the least restrictive regulations necessary to protect the health, safety, and welfare of the public. The proposed amendments are intended to ensure the regulations are clearly written,

easily understandable, and representative of the current advancements and standards of the industries.

Substance:

Tattooing:

18VAC41-50-10. Definitions. The proposed amendments (i) add definitions for business entity, convention tattooer, firm, guest tattooer, guest tattooer sponsor, responsible management, sole proprietor, post-secondary education level, and tattoo convention; (ii) amend definitions of licensee and master permanent cosmetic tattooer for clarification, and (iii) eliminate the definitions of limited term tattooer.

18VAC41-50-20. General requirements for tattooer, convention tattooer, guest tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer. The proposed amendments update, clarify, and standardize entry requirements. The proposed amendments (i) require an applicant disclose all felony convictions during his lifetime and certain misdemeanors within the last two years, (ii) add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession, and (iii) incorporate registered apprenticeship as a means for qualifying for the exam.

18VAC41-50-30. License by endorsement. The proposed amendments update this section to further clarify endorsement requirements.

18VAC41-50-40. Examination requirements and fees. The proposed amendments update this section to further clarify and consolidate examination requirements. The proposed amendments add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply, and that the board will only retain examination records for nonapplicants for a maximum of five years.

18VAC41-50-50. Reexamination requirements. The proposed amendments repeal this section and incorporate the content into 18VAC41-50-40.

18VAC41-50-60. Examination administration. The proposed amendments repeal this section and incorporate the content into 18VAC41-50-40.

18VAC41-50-80. Tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments (i) add the requirement that the applicant's license be in good standing and require applicants and any member of responsible management to disclose all felony convictions during his lifetime, certain misdemeanors within the last two years, and any prior discipline by a licensing entity; (ii) add that the board may deny licensure to any applicant who has prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (iii) require disclosure of the applicant's physical address and the firm's responsible management and certification that the applicant has read applicable laws and regulations; (iv) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; (v) require any change in responsible management be reported to the board within 30 days of the change; and (vi) add the requirement that parlors and salons that host guest tattooers must identify themselves as the sponsor and that parlors and salons provide direct supervision of the guest tattooer.

18VAC41-50-90. Limited term tattooer license. The proposed amendments repeal this section.

18VAC41-50-91. Convention tattooer license. The proposed amendments create a one-year convention tattooer license and set the requirements for licensure, including the requirements set forth in 18VAC41-50-20 A 1 through A 4, out-of-state residency, and health education in certain areas.

18VAC41-50-92. Guest tattooer license. The proposed amendments create a two-week guest tattooer license and set the requirements for licensure, including the requirements set forth in 18VAC41-50-20 A 1 through A 4, out-of-state residency, and health education in certain areas. Up to three guest tattooers licenses may be obtained per calendar year.

18VAC41-50-93. Guest tattooer sponsor. The proposed amendments create requirements for parlor and salons to sponsor guest tattooers, including direct supervision by a licensee.

18VAC41-50-100. School license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments (i) add the requirement that the applicant's license be in good standing and requires applicants and any member of responsible management to disclose all felony convictions during his lifetime, certain misdemeanors within the last two years, and any prior discipline by a licensing entity; (ii) add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (iii) require disclosure of the applicant's physical address and the firm's responsible management and certification that the applicant has read applicable laws and regulations; (iv) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; and (v) require any change in responsible management be reported to the board within 30 days of the change.

18VAC41-50-110. Tattooer instructor certificate. The proposed amendments update this section to add a requirement that instructors pass a course in teaching techniques at the post-secondary education level.

18VAC41-50-120. Permanent cosmetic tattooer instructor certificate. The proposed amendments update this section to

add the additional requirement that instructors pass a course in teaching techniques at the post-secondary education level.

18VAC41-50-130. Fees. The proposed amendments remove the fee for tattoo instructor endorsement, as the regulations do not allow for instructor endorsement.

18VAC41-50-150. License renewal required. The proposed amendments update this section to further clarify and standardize the requirements. Additionally, the amendments identify the expiration for the convention and guest tattooer licenses.

18VAC41-50-180. Failure to renew. The proposed amendments update this section to further clarify and standardize the requirements, including the addition of reinstatement requirements for tattoo schools that are consistent with other schools licensed under the board.

18VAC41-50-230. General requirements. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments also require schools to hold tattoo parlor licenses as required under § 54.1-700 of the Code of Virginia.

18VAC41-50-240. School identification. The proposed amendments repeal this regulation.

18VAC41-50-250. Records. The proposed amendments add a requirement that schools provide certain documentation to students within specified time periods.

18VAC41-50-260. Hours reported. The proposed amendments repeal this section.

18VAC41-50-270. Health education. The proposed amendments repeal this section and move its requirement to 18VAC41-50-280.

18VAC41-50-280. Tattooing school curriculum requirements. The proposed amendments update this section for consistency and add the requirement for health education from 18VAC41-50-270.

18VAC41-50-290. Hours of instruction and performances. The proposed amendments change the hours of instruction for tattooing schools from 750 to 1,000.

18VAC41-50-320. School identification. The proposed amendments repeal this section.

18VAC41-50-340. Hours reported. The proposed amendments repeal this section.

18VAC41-50-350. Health education. The proposed amendments repeal this section and move its requirement to18VAC41-50-280.

18VAC41-50-360. Permanent cosmetic tattooing school curriculum requirements. The proposed amendments update this section for consistency and add the requirement for health education from 18VAC41-50-350.

18VAC41-50-420. Grounds for license revocation or suspension; denial of application, renewal, or reinstatement; or imposition of a monetary penalty. The proposed amendments update this section to further clarify and simplify the requirements. The proposed amendments (i) provide grounds for discipline for failing to teach the approved curriculum, bribery, failing to respond or providing false or misleading information to the board or its agents, and refusing to allow inspection of any parlor, salon, or school; (ii) clarify and refine grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period; and (iii) provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease, and failing to comply with all procedures with regard to conduct at the examination.

Body Piercing:

18VAC41-60-10. Definitions. The proposed amendments add definitions for business entity, firm, responsible management, and sole proprietor. The definition of licensee has been amended to further clarify terms used in this chapter.

18VAC41-60-20. General requirements. The proposed amendments update this section to further clarify and standardize entry requirements. The proposed amendments (i) require an applicant disclose all felony convictions during his lifetime and certain misdemeanors within the last two years; (ii) add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; and (iii) incorporate registered apprenticeship as the means for qualifying for the exam.

18VAC41-60-30. License by endorsement. The proposed amendments update this section to further clarify endorsement requirements.

18VAC41-60-40. Examination requirements and fees. The proposed amendments update this section to further clarify and consolidate examination requirements. The proposed amendments also add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply, and that the board will only retain examination records for nonapplicants for a maximum of five years.

18VAC41-60-50. Reexamination requirements. The proposed amendments repeal this section and incorporate the content into 18VAC41-60-40.

18VAC41-60-60. Examination administration. The proposed amendments repeal this section and incorporate the content into 18VAC41-60-40.

18VAC41-60-80. Salon license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments (i) add the

requirement that the applicant's license be in good standing and require applicants and any member of responsible management to disclose all felony convictions during his lifetime, certain misdemeanors within the last two years, and any prior discipline by a licensing entity; (ii) add that the board may deny licensure to any applicant who has prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (iii) require disclosure of the applicant's physical address and the firm's responsible management and certification that the applicant has read applicable laws and regulations; (iv) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; and (v) require any change in responsible management be reported to the board within 30 days of the change.

18VAC41-60-110. License renewal required. The proposed amendments update this section to further clarify and standardize the regulations.

18VAC41-60-120. Continuing education requirement. The proposed amendments update this section to further clarify and standardize the regulations.

18VAC41-60-140. Failure to renew. The proposed amendments update this section to further clarify and standardize the requirements.

18VAC41-60-190. Physical facilities. The proposed amendments update this section to further clarify and standardize the regulations.

18VAC41-60-220. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty. The proposed amendments update this section to further clarify and simplify the requirements. The proposed amendments (i) provide grounds for discipline for failing to teach the approved curriculum, bribery, failing to respond or providing false or misleading information to the board or its agents, and refusing to allow inspection of any salon; (ii) clarify and refine grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period; and (iii) provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease, and failing to comply with all procedures with regard to conduct at the examination.

Issues: The primary advantage to the public is the addition of the responsible management system for tracking ownership of tattooing and body-piercing businesses. This system allows the board to better identify when individuals previously disciplined by the board are attempting to re-enter the profession. The addition of a one-year convention license and two-week guest tattooer license will facilitate businesses providing better services to the public and out-of-state tattooers working as guests in Virginia and contributing to Virginia's economy, all without diminishing health and safety protections for the public. The board will continue to approve applicants and license professionals for which it has safeguards to ensure proper competency and standards of conduct as required by statute. The addition of prohibited acts will reduce fraud and better ensure the regulant population is minimally competent. Further, regulants and applicants within these professions will be able to read the board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Consumers in the public, as well as regulators from related agencies, will have a better understanding of the board's requirements, which will also allow them to conduct their business with greater efficiency and ultimately lead to a more protected public.

The primary advantage to the Commonwealth will be the continued successful regulation of tattooers and body piercers who meet the minimum entry standards as required by statute. The proposed amendments strengthen the Department of Professional and Occupational Regulation's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. The primary disadvantage to the department is that by adding the responsible management systems, as well as turning the limited-term license into two separate licenses, there is more complexity added to the administration of the regulations.

The clarification of the proposed language will facilitate greater understanding of the board's requirements for all involved. Several changes, including teaching techniques training for tattoo instructors, guest and convention licenses, and increasing the hours of training were included at the request of the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Barbers and Cosmetology (Board) proposes to: 1) add the responsible management system for tracking ownership of tattooing and body piercing businesses, 2) significantly alter the limited-term tattooer license structure, 3) amend training requirements for tattooing schools and tattoo instructors, 4) address the release of tattoo school records, and 5) make other amendments for improved clarity.

Result of Analysis. The benefits likely exceed the costs for the majority of proposed changes. For other proposed amendments it is uncertain.

Estimated Economic Impact:

Responsible Management. The Board proposes to add the requirement that applicants for tattoo parlor, limited term tattoo parlor, permanent cosmetic tattoo salon, body piercing salon, or body piercing ear only salon, disclose the names of

the firm's responsible management. The proposed regulation defines responsible management as:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

The applicant and all members of the responsible management would be required to be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where licensed and disclose any disciplinary action taken in Virginia and all other jurisdictions. This would allow the Board to better identify when individuals previously disciplined by the Board are attempting to re-enter the profession.

Limited-term Tattooer License. The current regulation contains a limited term tattooer license that is effective for five consecutive days prior to the expiration date. A person may obtain a maximum of five limited term tattooer licenses within a calendar year and a maximum of two limited term tattooer licenses within 30 consecutive days.

According to the Department of Professional and Occupational Regulation (DPOR), out-of-state tattooers coming to Virginia for tattoo conventions and the licensee hosts of the convention have found the need to reapply for licensure and pay the licensing fee multiple times each year to be onerous. Also according to the agency, potential guest tattooers from out-of-state and the potential hosts of the guest tattooers have often found the five-day licensing period inadequate to sufficiently justify traveling to Virginia. Parlor owners at times find having guest tattooers to be good for business. The Board proposes to eliminate the current five-day limited-term tattooer license and replace it with a one-year convention tattooer license and a two-week guest tattooer license.

For both the one-year convention tattooer license and the two-week guest tattooer license, the applicant would need to: 1) present documentation showing out-of-state residency, 2) provide documentation of health education knowledge to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR that is acceptable to the Board, 3) disclose any disciplinary action taken in Virginia or any other jurisdiction in connection with the applicant's practice, 4) disclose criminal convictions in Virginia and all other jurisdictions, and 5) sign a statement certifying that the applicant has read and understands the Virginia tattooing license laws and regulation. The guest tattooer license applicant would also need to show guest tattooer sponsorship, including signature of the sponsor parlor's responsible management. An out of state resident would be able to obtain up to three guest tattooer licenses per calendar year. The proposed requirements help ensure the same level of health, safety and welfare protections as under the current regulation.

Both the existing and proposed regulation contain a $75 fee for all individual licenses.[1] The one-year convention license reduces administrative hassle and fees expended for applicants who intend to participate in more than one Virginia convention per year. Under the current regulation, licensure for participating at two conventions (that are not entirely within the same five-day period) would cost $150 in fees, and licensure for participating at three conventions would cost $225 in fees. With the proposed one-year convention license, the tattooer would only need to apply for one license a year and pay only $75 in fees. This may encourage greater participation at Virginia tattoo conventions, helping ensure the success and continuation of such conventions.

As mentioned above, the limited term tattooer license that is effective for only five consecutive days has discouraged Virginia tattoo parlors from having out-of-state guest tattooers. The proposed two-week guest tattooer license would likely greatly alleviate that problem by providing sufficient time for the guest tattoo artist to practice and make the trip worthwhile. As some parlor owners may find having guest tattooers to be good for business, this proposal would be beneficial for the Commonwealth.

Training Requirements. DPOR reports that there have been numerous complaints concerning tattoo instructor teaching ability. Consequently, the Board proposes to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level. There is presumably variation in the effectiveness of such courses. Thus it is not known whether the benefits would exceed the costs of this proposed requirement. As for cost, DPOR has indicated that it would accept online courses that may cost about $150 in fees and 24 hours (spread over six weeks) in time.[2]

The regulation includes an extensive list of topics to be addressed within tattooing school instruction. It currently states that the curriculum requirements shall be taught over a minimum of 750 hours. According to DPOR, there is a consensus that the curriculum requirements cannot be adequately taught within that time. Thus, the Board proposes to increase the minimum hours to 1,000. DPOR does not anticipate any objection to this change.

Tattooing School Records. DPOR has heard frequent complaints that tattooing schools are withholding progress documentation from their students. In response, the Board proposes to require that schools, within 21 days of a student's

request, produce documentation and performances completed by that student. This provision would assist students in obtaining their records, which are needed for licensure applications.

Businesses and Entities Affected. The proposed amendments potentially affect the 642 tattooers, 242 tattoo parlors, 9 tattooing instructors, 5 tattoo schools, 355 permanent cosmetic tattooers, 7 master permanent cosmetic tattooers, 24 permanent cosmetic tattoo instructors, 105 permanent cosmetic tattooing salons, 14 permanent cosmetic tattooing schools, 127 body piercers, 97 body piercing salons, 304 "ear-only" body piercers, and 62 body piercer ear only salons licensed by the Board. The Board received 191 limited-term tattooer license applications in 2017, which would be replaced by an estimated 100 to 150 convention and guest tattooer applications under the proposed regulatory change.[3] Most, if not all, of the parlors and salons would qualify as small businesses. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level would also affect providers of such courses.

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

Projected Impact on Employment. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level may moderately increase employment at private providers of such courses.

Effects on the Use and Value of Private Property. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level would increase demand for and perhaps increase the value of private providers of such courses. To the extent that the proposed one-year convention license encourages greater participation at Virginia tattoo conventions and the proposed two-week guest tattooer license increases the profitable use of such tattoo artists at Virginia parlors, the use and value of Virginia tattoo conventions and tattoo parlors may be positively affected.

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

Small Businesses:

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

Costs and Other Effects. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level increases costs for these individuals. This would likely add cost for tattooing schools, as they may pay for all or part of the instructor's cost, or find it more difficult to find qualified instructors. The tattooing schools are likely all small businesses.

Alternative Method that Minimizes Adverse Impact. The adverse impact stems from increased cost associated with trying to improve teaching quality at tattooing schools. There is no clear alternative that would achieve this goal at lower cost.

Adverse Impacts:

Businesses. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level increases costs for these individuals. This would likely add cost for tattooing schools, as they may pay for all or part of the instructor's cost, or find it more difficult to find qualified instructors.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposal to require that tattoo instructor applicants and permanent cosmetic tattoo instructor applicants pass a course on teaching techniques at the post-secondary level increases costs for these individuals.

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[1]The existing and proposed regulations specify a $75 fee through August 31, 2020, and a $105 fee for September 1, 2020, and after.

[2]For example, as of August 24, 2018, the URL the ed2go course Teaching Adult Learners indicated a $149 fee and 24 hours of course time over 6 weeks. https://www.ed2go.com/courses/teacher-professional-development/child-development/ilc/teaching-adult-learners

[3]Data source: Department of Professional and Occupational Regulation

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis.

Summary:

The proposed amendments (i) add the responsible management system for tracking ownership of tattooing and body-piercing businesses; (ii) significantly alter the limited term tattooer license structure by eliminating the current five-day limited term tattooer license and replacing it with a one-year tattooer license and a two-week guest tattooer license; (iii) update training requirements for tattoo schools and tattoo instructors; (iv) address the release of tattoo school records; and (v) make other changes to clarify, update, and standardize the regulations.

Part I
General

18VAC41-50-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Apprenticeship program" means an approved tattooing training program conducted by an approved apprenticeship sponsor.

"Apprenticeship sponsor" means an individual approved to conduct tattooing apprenticeship training who meets the qualifications in 18VAC41-50-70.

"Aseptic technique" means a hygienic practice that prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Convention tattooer" means a tattooer residing outside Virginia who is licensed to work only at a tattoo convention located in Virginia.

"Direct supervision" means (i) that a Virginia licensed tattooer shall be present in the tattoo parlor at all times when services are being performed by an apprentice, (ii) that a Virginia licensed tattooing instructor shall be present in the tattooing school at all times when services are being performed by a student, or (iii) that a Virginia licensed permanent cosmetic tattooing instructor shall be present in the permanent cosmetic tattooing school at all times when services are being performed by a student.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Gratuitous services" as used in § 54.1-701.5 of the Code Virginia means providing tattooing services without receiving compensation or reward, or obligation. Gratuitous services do not include services provided at no charge when goods are purchased.

"Guest tattooer" means a tattooer or permanent cosmetic tattooer residing outside of Virginia who is licensed only to work for a two-week period at a specified tattoo parlor or permanent cosmetic tattoo salon.

"Guest tattooer sponsor" means a licensed tattoo parlor or permanent cosmetic tattooing salon that is sponsoring and providing direct supervision of a guest tattooer.

"Licensee" means any person, sole proprietorship, partnership, ~~association,~~ corporation, limited liability company, ~~or corporation~~ limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

~~"Limited term tattooer" means a tattooer licensed to perform tattooing for a maximum of five consecutive days in an organized event or in a Virginia licensed tattoo parlor.~~

"Limited term tattoo parlor" means a tattoo parlor temporary location licensed to operate for a maximum of five consecutive days.

"Master permanent cosmetic tattooer" means any person who for compensation practices permanent cosmetic tattooing known in the industry as advanced permanent cosmetic tattooing, including ~~but not limited to cheek blush,~~ eye shadow~~,~~ and breast and scar repigmentation or camouflage.

"Permanent cosmetic tattoo salon" means any place in which permanent cosmetic tattooing is offered or practiced for compensation.

"Permanent cosmetic tattooer" means any person who for compensation practices permanent cosmetic tattooing known in the industry as basic permanent cosmetic tattooing, including ~~but not limited to~~ eyebrows, eyeliners, lip coloring, lip liners, or full lips.

"Permanent cosmetic tattooing" means placing marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin on the face, including ~~but not limited to~~ eyebrows, eyeliners, lip coloring, lip liners, full lips, cheek blush, eye shadow, and on the body for breast and scar repigmentation or camouflage~~;~~, also known as permanent ~~make up~~ makeup or micropigmentation.

"Permanent cosmetic tattooing instructor" means a person who has been certified by the board who meets the competency standards of the board as an instructor of permanent cosmetic tattooing.

"Permanent cosmetic tattooing school" means a place or establishment licensed by the board to accept and train students and offers a permanent cosmetic tattooing curriculum approved by the board.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by an accrediting agency that is recognized by the U.S. Department of Education.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Sterilization area" means a separate room or area separate from workstations with restricted client access in which tattooing instruments are cleaned, disinfected, and sterilized.

"Tattoo convention" means an event where Virginia and out-of-state tattooers gather for no more than five consecutive days to offer tattooing services to the public.

"Tattooing instructor" means a person who has been certified by the board who meets the competency standards of the board as an instructor of tattooing.

"Temporary location" means a fixed location at which tattooing is performed for a specified length of time of not more than five days in conjunction with a single event or celebration.

Part II
Entry

18VAC41-50-20. General requirements for tattooer, ~~limited term~~ convention tattooer, guest tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer.

A. ~~In order to receive a license as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer in compliance with § 54.1-703 of the Code of Virginia, an applicant must~~ Any individual wishing to engage in tattooing, limited term tattooing, permanent cosmetic tattooing, or master permanent cosmetic tattooing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

1. The applicant must be in good standing as a tattooer, ~~limited term~~ convention tattooer, guest tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in ~~another~~ Virginia or any other jurisdiction in connection with the applicant's practice as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer. This disclosure includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure ~~whether~~ if he has been previously licensed in Virginia as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in tattooing, convention tattooing, guest tattooing, permanent cosmetic tattooing, or master permanent cosmetic tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this subdivision. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and ~~the board's tattooing regulations~~ this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, ~~the~~ each applicant ~~must not have been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.~~ shall disclose the

following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board approved examination, administered either by the board or by a designated testing service.

~~6. Persons who (i) make application for licensure between October 1, 2006, and September 30, 2007; (ii) have completed three years of documented work experience within the preceding five years as a tattooer; and (iii) have completed a minimum of five hours of health education to include but not limited to bloodborne disease, sterilization, and aseptic techniques related to tattooing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.~~

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia.

a. Any person completing an approved tattooing apprenticeship program in a Virginia licensed tattoo parlor or completing an approved tattooing training program in a Virginia licensed school of tattooing~~,~~ or completing a permanent cosmetic tattooing training program in a Virginia licensed permanent cosmetic tattooing school shall be eligible to sit for the applicable examination.

b. Any person completing master permanent cosmetic tattooing training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.

2. Training outside of the Commonwealth of Virginia~~,~~ but within the United States and its territories.

a. Any person completing a tattooing or permanent cosmetic tattooing training or tattooing apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination. If less than the required hours of tattooing or permanent cosmetic tattooing training or tattooing apprenticeship was completed, an applicant must submit (i) documentation acceptable to the board verifying the completion of a substantially equivalent tattooing training or tattooing apprenticeship or permanent cosmetic tattooing training or documentation of three years of work experience within the preceding five years as a tattooer~~,~~ and (ii) documentation of completion of a minimum of five hours of health education to include ~~but not limited to blood-borne disease~~ (a) bloodborne pathogens, sterilization, and aseptic techniques related to tattooing ~~and~~; (b) first aid; and (c) CPR that is acceptable to the board in order to be eligible for examination.

b. Any person completing master permanent cosmetic tattooing training that is acceptable to the board shall be eligible to sit for the examination. Training should be conducted in a permanent facility.

18VAC41-50-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer in any other state or jurisdiction of the United States and who has completed a training or apprenticeship program and an examination that is substantially equivalent to that required by this chapter may be issued a tattooer license, permanent cosmetic tattooer license, or master permanent cosmetic tattooer license, respectively, without an examination. The applicant must also meet the requirements set forth in 18VAC41-50-20 A 1 through A 4.

18VAC41-50-40. Examination requirements and fees.

A. Applicants for initial licensure shall pass an examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

C. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

D. Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application.

E. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-

4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.

F. Any candidate failing to apply for initial licensure within five years of passing the written examination shall be required to retake the examination. Records of examinations shall be maintained for a maximum of five years.

18VAC41-50-50. ~~Reexamination requirements.~~ (Repealed.)

~~Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.~~

18VAC41-50-60. ~~Examination administration.~~ (Repealed.)

~~A. The examinations may be administered by the board or the designated testing service.~~

~~B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.~~

~~C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.~~

18VAC41-50-80. Tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon license.

A. Any ~~individual~~ firm wishing to operate a tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon shall obtain a tattoo parlor license, limited term tattoo parlor license, or permanent cosmetic tattoo salon license in compliance with § 54.1-704.1 of the Code of Virginia~~.~~ and shall meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed parlor or salon in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon or practice of the profession. This disclosure includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this subdivision. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. A tattoo parlor license, limited term tattoo parlor license, or permanent cosmetic tattoo salon license shall not be transferable and shall bear the same name and address of the

business. Any changes in the name, or address, or ownership of the parlor or salon shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board applying for a new license within 30 days of the changes.

C. In the event of a closing of a tattoo parlor or permanent cosmetic tattoo salon, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Any tattoo parlor or permanent cosmetic tattoo salon wishing to host a guest tattooer must identify itself as the guest tattooer sponsor and must provide direct supervision of any tattooing by the guest tattooer.

D. F. Any individual firm wishing to operate a tattoo parlor in a temporary location must have a tattoo parlor license or limited term tattoo parlor license issued by the board.

E. G. A limited term tattoo parlor license is effective for five consecutive days prior to the expiration date.

F. H. A person or entity firm may obtain a maximum of five limited term tattoo parlor licenses within a calendar year.

G. I. A person or entity firm may obtain a maximum of two limited term tattoo parlor licenses within a 30 consecutive days time period.

18VAC41-50-90. Limited term tattooer license. (Repealed.)

A. A limited term tattooer license is effective for five consecutive days prior to the expiration date.

B. A person may obtain a maximum of five limited term tattooer licenses within a calendar year.

C. A person may obtain a maximum of two limited term tattooer licenses within a 30 consecutive days time period.

D. A limited term tattooer applicant must meet the following qualifications:

1. Requirements set forth in 18VAC41-50-20 A 1 through A 4.

2. Documentation of health education knowledge to include but not limited to blood borne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR that is acceptable to the board.

E. A limited term tattooer applicant is not required to complete 18VAC41-50-20 A 5.

18VAC41-50-91. Convention tattooer license.

A. A convention tattooer license shall expire one year from the last day of the month in which it was issued.

B. A convention tattooer applicant must meet the following qualifications:

1. Requirements set forth in 18VAC41-50-20 A 1 through A 4.

2. Present documentation showing out-of-state residency.

3. Documentation of health education knowledge to include (i) bloodborne disease, sterilization, and aseptic techniques related to tattooing; (ii) first aid; and (iii) CPR that is acceptable to the board.

C. A convention tattooer applicant is not required to complete 18VAC41-50-20 A 5.

18VAC41-50-92. Guest tattooer license.

A. A guest tattooer license is effective for 14 days prior to the expiration date.

B. An out-of-state resident may obtain up to three guest tattooer licenses per calendar year.

C. A guest tattooer applicant must meet the following qualifications:

1. Requirements set forth in 18VAC41-50-20 A 1 through A 4.

2. Present documentation showing out-of-state residency.

3. Documentation of health education knowledge to include (i) bloodborne disease, sterilization, and aseptic techniques related to tattooing; (ii) first aid; and (iii) CPR that is acceptable to the board.

4. Documentation showing guest tattooer sponsor including signature of sponsor parlor's responsible management.

D. A guest tattooer applicant is not required to complete 18VAC41-50-20 A 5.

18VAC41-50-93. Guest tattooer sponsor.

A. The licensed tattoo parlor that agrees to sponsor a guest tattooer shall ensure that the guest tattooer:

1. Has a valid, current guest tattooer license for the entire duration of his tattooing at the parlor.

2. Is directly supervised by a licensed tattooer.

3. Complies with all Virginia regulations relating to health, sanitation, client qualifications, and standards of practice.

B. The licensed permanent cosmetic tattooing salon that agrees to sponsor a guest tattooer shall ensure that the guest tattooer:

1. Has a valid, current guest tattooer licensed for the entire duration of his tattooing at the salon.

2. Is directly supervised by a licensed tattooer or permanent cosmetic tattooer.

3. Complies with all Virginia regulations relating to health, sanitation, client qualifications, and standards of practice.

C. The guest tattooer sponsor's responsible management must sign the guest tattooer application certifying the sponsor will ensure the requirements of subsections A and B of this section.

D. The guest tattooer sponsor shall be responsible for the acts or omissions of the guest tattooer in the performance of tattooing or permanent cosmetic tattooing.

18VAC41-50-100. School license.

A. Any ~~individual~~ firm wishing to operate a tattooing school or permanent cosmetic tattooing school shall obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia~~.~~ and shall meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed parlor or salon in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon or practice of the profession. This disclosure includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this subdivision. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia tattooing license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. A tattooing school license or permanent cosmetic tattooing school license shall not be transferable and shall bear the same name and address as the school. Any changes in the name or address of the school shall be reported to the board in writing within 30 days of such change. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. ~~In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in~~

~~writing to the board within 30 days of the changes.~~ Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. ~~In the event of a school closing, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned.~~ Within 30 days of the closing, the school shall return the license to the board and provide a written report to the board on performances and hours of each student who has not completed the program.

E. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

18VAC41-50-110. Tattooing instructor certificate.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a tattooing instructor certificate if the person:

1. Holds a current Virginia tattooer license; ~~and~~

2. Provides documentation of three years of work experience within the past five years; and

3. Passes a course on teaching techniques in a post-secondary education level.

B. Tattooing instructors shall be required to maintain a tattooer license.

18VAC41-50-120. Permanent cosmetic tattooing instructor certificate.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a permanent cosmetic tattooing instructor certificate if the person:

1. Holds a current Virginia permanent cosmetic tattooer license or master permanent cosmetic tattooer license; ~~and~~

2. Provides documentation of three years of work experience within the past five years; and

3. Passes a course on teaching techniques at the post-secondary education level.

B. Permanent cosmetic tattooing instructors shall be required to maintain a permanent cosmetic tattooer license or master permanent cosmetic tattooer license.

Part III
Fees

18VAC41-50-130. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2016, through August 31, 2020	AMOUNT DUE September 1, 2020, and after	WHEN DUE
Individuals:			
Application	$75	$105	With application
License by Endorsement	$75	$105	With application
Renewal	$75	$105	With renewal card prior to expiration date
Reinstatement	$150* *includes $75 renewal fee and $75 reinstatement fee	$210* *includes $105 renewal fee and $105 reinstatement fee	With reinstatement application

Instructors:			
Application	$100	$125	With application
~~License by Endorsement~~	~~$100~~	~~$125~~	~~With application~~
Renewal	$100	$150	With renewal card prior to expiration date
Reinstatement	$200* *includes $100 renewal fee and $100 reinstatement fee	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Parlors or salons:			
Application	$130	$190	With application
Renewal	$130	$190	With renewal card prior to expiration date
Reinstatement	$260* *includes $130 renewal fee and $130 reinstatement fee	$380* *includes $190 renewal fee and $190 reinstatement fee	With reinstatement application
Schools:			
Application	$140	$220	With application
Renewal	$140	$220	With renewal card prior to expiration date
Reinstatement	$280* *includes $140 renewal fee and $140 reinstatement fee	$440* *includes $220 renewal fee and $220 reinstatement fee	With reinstatement application

Part IV
~~Renewal/Reinstatement~~ Renewal and Reinstatement

18VAC41-50-150. License renewal required.

~~All tattooer~~ 1. Tattooer licenses, tattoo parlor licenses, tattooing instructors licenses, tattooing schools licenses, permanent cosmetic tattooer licenses, master permanent cosmetic tattooer licenses, permanent cosmetic tattoo salon licenses, and permanent cosmetic tattooing schools licenses shall expire two years from the last day of the month in which they were issued.

2. Convention tattooer licenses shall expire one year from the last day of the month in which it was issued.

3. Guest tattooer licenses will expire 14 days after the effective date of the license and may not be renewed.

18VAC41-50-160. Continuing education requirement.

All licensed tattooers, permanent cosmetic tattooers, and master permanent cosmetic tattooers shall be required to satisfactorily complete a minimum of five hours of health education to include ~~but not limited to~~ (i) bloodborne disease, sterilization, and aseptic techniques related to tattooing~~,~~ (ii) first aid; and (iii) CPR during their licensed term. Documentation of training completion shall be provided at the time of renewal along with the required fee.

18VAC41-50-180. Failure to renew.

A. When a ~~tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer~~ licensed or certified individual or business entity fails to renew ~~his~~ its license within 30 days following ~~its~~ the expiration date of the license, the licensee shall meet the renewal requirements as prescribed in 18VAC41-50-170 and apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

B. When a ~~tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer~~ licensed or certified individual or business entity fails to renew ~~his~~ its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant, shall meet all current

application requirements, shall pass the board's current examination, and shall receive a new license.

~~C. When a tattoo parlor or permanent cosmetic tattoo salon fails to renew its license within 30 days following the expiration date, it shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.~~

~~D. When a tattoo parlor or permanent cosmetic tattoo salon fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~E. When a tattooing school or permanent cosmetic tattooing school fails to renew its license within 30 days following the expiration date, the licensee shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.~~

~~F. When a tattooing school or permanent cosmetic tattooing school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

C. The application for reinstatement for a school shall provide (i) the reasons for failing to renew prior to the expiration date, and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-50-250 and 18VAC41-50-330. Pursuant to 18VAC41-50-100, 18VAC41-50-230, and 18VAC41-50-310 upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

~~G.~~ D. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

~~H.~~ E. When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the ~~previous expiration date of the license~~ date of the last day of the month of reinstatement.

~~I.~~ F. A licensee ~~who~~ that reinstates ~~his~~ its license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

~~J.~~ G. A licensee ~~who~~ that fails to reinstate ~~his~~ its license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

18VAC41-50-230. General requirements.

A tattooing school shall:

1. Hold a tattooing school license for each and every location.

2. Hold a tattoo parlor license ~~if the school receives compensation for services provided in the area where practical instruction is conducted and services are provided~~.

3. Employ a staff of certified tattooing instructors.

4. Develop individuals for entry-level competency in tattooing.

5. Submit its curricula for board approval. All changes to curricula must be resubmitted and approved by the board.

6. Inform the public that all services are performed by students if the tattooing school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. Conduct classroom instruction in an area separate from the area where practical instruction is conducted and services are provided.

8. Conduct all instruction and training of tattooers under the direct supervision of a certified tattooing instructor.

18VAC41-50-240. ~~School identification.~~ (Repealed.)

~~Each tattooing school approved by the board shall identify itself to the public as a teaching institution.~~

18VAC41-50-250. Records.

A. Schools are required to keep upon graduation, termination, or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.

B. For a period of five years after a student completes the curriculum, terminates, or withdraws from the school, schools are required to provide documentation of hours and performances completed by a student upon receipt of a written request from the student.

C. Schools shall within 21 days upon receipt of a written request from a student provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.

~~C.~~ D. Prior to a school changing ownership or a school closing, the schools are required to provide to current students documentation of hours and performances completed.

~~D.~~ E. For a period of one year after a school changes ownership, schools are required to provide documentation of hours and performances completed by a current student upon receipt of a written request from the student.

18VAC41-50-260. ~~Hours reported.~~ (Repealed.)

~~Within 30 days of the closing of a licensed tattooing school for any reason, the school shall provide a written report to the board on performances and hours of each of its students who has not completed the program.~~

18VAC41-50-270. ~~Health education.~~ (Repealed.)

~~Any person desiring to enroll in the tattooing school shall be required to provide documentation of satisfactory completion of a minimum of five hours of health education to include but not limited to blood borne disease, sterilization, and aseptic techniques related to tattooing, and first aid and CPR.~~

18VAC41-50-280. Tattooing school curriculum requirements.

A. Any person desiring to enroll in the tattooing school shall be required to provide documentation of satisfactory completion of a minimum of five hours of health education to include (i) bloodborne disease, sterilization, and aseptic techniques related to tattooing; (ii) first aid; and (iii) CPR.

B. Tattooing school curriculum requirements are as follows:

1. Microbiology.

a. Microorganisms, viruses, bacteria, fungus;

b. Transmission cycle of infectious diseases; and

c. Characteristics of antimicrobial agents.

2. Immunization.

a. Types of immunizations;

b. Hepatitis ~~A G~~ A through G transmission and immunization;

c. HIV/AIDS;

d. Tetanus, streptococcal, zoonotic, tuberculosis, pneumococcal, and influenza;

e. Measles, mumps, and rubella;

f. Vaccines and immunization; and

g. General preventative measures to be taken to protect the tattooer and client.

3. Sanitation and disinfection.

a. Definition of terms:

(1) Sterilization;

(2) Disinfection and disinfectant;

(3) Sterilizer or sterilant;

(4) Antiseptic;

(5) Germicide;

(6) Decontamination; and

(7) Sanitation.

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, disinfectants, and fumigants;

d. The use of sanitation equipment;

e. Preservice sanitation procedure; and

f. Postservice sanitation procedure.

4. Safety.

a. Proper needle handling and disposal;

b. How to avoid overexposure to chemicals;

c. The use of Material Safety Data Sheets;

d. Blood spill procedures;

e. Equipment and instrument storage; and

f. First aid and CPR.

5. ~~Blood-borne~~ Bloodborne pathogen standards.

a. OSHA and CDC ~~blood-borne~~ bloodborne pathogen standards;

b. Control plan for ~~blood-borne~~ bloodborne pathogens;

c. Exposure control plan for tattooers;

d. Overview of compliance requirements; and

e. Disorders and when not to service a client.

6. Professional standards.

a. History of tattooing~~;~~.

b. Ethics~~;~~.

c. Recordkeeping:

(1) Client health history;

(2) Consent forms; and

(3) HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy Rule) Standards.

d. Preparing station, making appointments, parlor ethics:

(1) Maintaining professional appearance, notifying clients of schedule changes; and

(2) Promoting services of the parlor and establishing clientele.

e. Parlor management.

(1) Licensing requirements; and

(2) Taxes.

f. Supplies.

(1) Usages;

(2) Ordering; and

(3) Storage.

7. Tattooing.

a. Client consultation;

b. Client health form;

c. Client disclosure form;

d. Client preparation;

e. Sanitation and safety precautions;

f. Implement selection and use;

g. Proper use of equipment;

h. Material selection and use;

i. Needles;

j. Ink;

k. Machine:

(1) Construction;

(2) Adjustment; and

(3) Power supply;

l. Art, drawing; and

m. Portfolio.

8. Anatomy.

a. Understanding of skin; and

b. Parts and functions of skin.

9. Virginia tattooing laws and regulations.

18VAC41-50-290. Hours of instruction and performances.

A. Curriculum requirements specified in 18VAC41-50-280 shall be taught over a minimum of ~~750~~ 1,000 hours as follows:

1. 350 hours shall be devoted to theory pertaining to ~~subdivisions~~ 18VAC41-50-280 B 1, 2, 4, 5, 6, 8, and 9 ~~of 18VAC41-50-280~~;

2. 150 hours shall be devoted to theory pertaining to subdivision 3 of 18VAC41-50-280; and

3. The remaining ~~250~~ 500 hours shall be devoted to practical training to include ~~but not limited to~~ tattooing curriculum requirements and a total of 100 performances pertaining to ~~subdivision 7 of~~ 18VAC41-50-280 B 7.

B. An approved tattooing school may conduct an assessment of a student's competence in the theory and practical requirements for tattooing and, based on the assessment, give a maximum of 350 hours of credit ~~towards~~ toward the requirements in subdivisions A 1 and A 3 of this section. No credit shall be allowed for the 150 hours required in subdivision A 2 of this section.

18VAC41-50-320. ~~School identification.~~ (Repealed.)

~~Each permanent cosmetic tattooing school approved by the board shall identify itself to the public as a teaching institution.~~

18VAC41-50-340. ~~Hours reported.~~ (Repealed.)

~~Within 30 days of the closing of a licensed permanent cosmetic tattooing school for any reason, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program.~~

18VAC41-50-350. ~~Health education.~~ (Repealed.)

~~Any person desiring to enroll in the permanent cosmetic tattooing school shall be required to provide documentation of satisfactory completion of health education on blood-borne disease.~~

18VAC41-50-360. Permanent cosmetic tattooing school curriculum requirements.

A. Any person desiring to enroll in the permanent cosmetic tattooing school shall be required to provide documentation of satisfactory completion of health education on bloodborne disease.

B. Permanent cosmetic tattooing school curriculum requirements are as follows:

1. Virginia tattooing laws and regulations.

2. Machines and devices.

a. Coil machine;

b. Hand device; and

c. Others devices.

3. Needles.

a. Types;

b. Uses; and

c. Application.

4. Anatomy.

a. Layers of skin;

b. Parts and functions of skin; and

c. Diseases.

5. Color theory.

a. Skin and pigment color; and

b. Handling and storage of pigments.

6. Transmission cycle of infectious diseases.

7. Immunization.

a. Types of immunizations; and

b. General preventative measures to be taken to protect the tattooer and client.

8. Sanitation and disinfection.

a. Definition of terms:

(1) Sterilization;

(2) Disinfection and disinfectant;

(3) Sterilizer or sterilant;

(4) Antiseptic;

(5) Germicide;

(6) Decontamination; and

(7) Sanitation.;

b. The use of steam sterilization equipment and techniques;

c. The use of chemical agents, antiseptics, and disinfectants;

d. The use of sanitation equipment;

e. Preservice sanitation procedure; and

f. Postservice sanitation procedure.

9. Safety.

a. Proper needle handling and disposal;

b. Blood spill procedures;

c. Equipment and instrument storage; and

d. First aid.

10. ~~Blood-borne~~ Bloodborne pathogen standards.

a. OSHA and CDC ~~blood-borne~~ bloodborne pathogen standards;

b. Overview of compliance requirements; and

c. Disorders and when not to service a client.

11. Anesthetics.

a. Use;

b. Types;

c. Application; and

d. Removal.

12. Equipment.

a. Gloves;

b. Masks;

c. Apron;

d. Chair;

e. Lighting; and

f. Work table.

13. Professional standards.

a. History of permanent cosmetic tattooing;.

b. Ethics;.

c. Recordkeeping:

(1) Client health history; and

(2) Consent forms.

d. Preparing station, making appointments, salon ethics:

(1) Maintaining professional appearance, notifying clients of schedule changes; and

(2) Promoting services of the salon and establishing clientele.

e. Salon management:

(1) Licensing requirements; and

(2) Taxes.

14. Permanent cosmetic tattooing.

a. Client consultation;

b. Client health form;

c. Client disclosure form;

d. Client preparation;

e. Sanitation and safety precautions;

f. Implement selection and use;

g. Proper use of equipment;

h. Material selection and use~~.~~;

i. Eyebrows;

j. Eyeliner;

k. Lip coloring; and

l. Lip liners.

18VAC41-50-400. Tattooer or permanent cosmetic tattooer or master permanent cosmetic tattooer responsibilities.

A. All tattooers shall provide to the owner one of the following:

1. Proof of completion of the full series of Hepatitis B vaccine;

2. Proof of immunity by blood titer; or

3. Written declaration of refusal of the owner's offer of a full series of Hepatitis B vaccine.

B. All tattooers shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty.

C. All tattooers shall clean their hands thoroughly using hot or tempered water with a liquid germicidal soap or use sanitizing solution to clean hands before and after tattooing and as necessary to remove contaminants.

D. All tattooers must wear single-use examination gloves while assembling tattooing instruments and while tattooing.

E. Each time there is an interruption in the service, ~~each time~~ the gloves become torn or perforated, or whenever the ability of the gloves to function as a barrier is compromised:

1. Gloves shall be removed and disposed of; and

2. Hands shall be cleaned and a fresh pair of gloves used.

F. Tattooers shall use standard precautions while tattooing. A tattooer diagnosed with a communicable disease shall provide to the department a written statement from a health care practitioner that the tattooer's condition no longer poses a threat to public health.

G. Tattooers with draining lesions on their hands or face will not be permitted to work until cleared by a ~~health care~~ health care professional.

H. The area of the client's skin to be tattooed shall be cleaned with an approved germicidal soap according to label directions.

I. Tattooing inks and dyes shall be placed in a single-use disposable container for each client. Following the procedure, the unused contents and container will be properly disposed of.

J. If shaving is required, razors shall be single-use and disposed of in a puncture resistant container.

K. Each tattooer performing any tattooing procedures in the parlor or salon shall have the education, training, and experience, or any combination thereof, to practice aseptic technique and prevent the transmission of bloodborne pathogens. All procedures shall be performed using aseptic technique.

L. A set of individual, sterilized needles shall be used for each client. Single-use disposable instruments shall be disposed of in a puncture resistant container.

M. Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water soap and then sterilized by autoclaving. Contaminated instruments shall be handled with disposable gloves.

N. Used instruments that are ultrasonically cleaned shall be rinsed under running hot water prior to being placed in the used instrument container;

O. Used instruments that are not ultrasonically cleaned prior to being placed in the used instrument container shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and sterilized by autoclaving.

P. The ultrasonic unit shall be sanitized daily with a germicidal solution.

Q. Nondisposable instruments shall be sterilized and shall be handled and stored in a manner to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent bags are utilized, the bag shall also list the contents.

R. Autoclave sterilization bags with a color code indicator that changes color upon proper sterilization shall be utilized during the autoclave sterilization process.

S. Instruments shall be placed in the autoclave in a manner to allow live steam to circulate around them.

T. Contaminated disposable and single-use items shall be disposed of in accordance with federal and state regulations regarding disposal of biological hazardous materials.

U. The manufacturer's written instructions of the autoclave shall be followed.

18VAC41-50-420. Grounds for license or certificate revocation, suspension or probation; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.

~~A.~~ The board may, in considering the totality of the circumstances, fine any licensee or certificate holder and suspend, place on probation, or revoke or refuse to renew or reinstate any license or certificate, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter if ~~the board~~ it finds that the licensee, certificate holder, or applicant:

1. ~~The licensee, certificate holder, or applicant is~~ Is incompetent~~,~~ or negligent in ~~practice~~ tattooing, or incapable mentally or physically, as those terms are generally understood in the profession, to (i) practice as a tattooer, ~~limited term tattooer,~~ tattooer apprentice, permanent cosmetic tattooer, or master permanent cosmetic tattooer or (ii) operate a parlor, permanent cosmetic tattooing salon, or school;

2. ~~The licensee, certificate holder, or applicant is~~ Is convicted of fraud or deceit in the practice of tattooing or fails to teach the curriculum as provided for in this chapter;

3. ~~The licensee, certificate holder, or applicant obtained~~ Obtained, attempted to obtain, renewed, or reinstated a license by false or fraudulent representation;

4. ~~The licensee, certificate holder, or applicant violates~~ Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which tattooers may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing tattooing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed parlor, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

~~5. The licensee, certificate holder, or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

~~6. A licensee or certificate holder fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license~~. The board shall not be responsible for the licensee's or certificate holder's failure to receive notices, communications and correspondence caused by the licensees' or certificate holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board~~;

~~7. The licensee, certificate holder, or applicant~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~8. The licensee, certificate holder, or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or certificate in connection with a disciplinary action in any other jurisdiction or of any license or certificate that has been the subject of disciplinary action in any other jurisdiction; ~~or~~

~~9. In accordance with § 54.1-204 of the Code of Virginia, the licensee or certificate holder has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of tattooing. The board shall have the authority to determine, based upon all the information available, including the regulant's record of prior convictions, if the regulant is unfit or unsuited to engage in the profession of tattooing or permanent cosmetic tattooing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.~~

~~B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. The owner or operator of the tattoo parlor, limited term tattoo parlor, or permanent cosmetic tattoo salon fails to comply with the facility requirements of tattoo parlors, limited term tattoo parlors, or permanent cosmetic tattoo~~

~~salons provided for in this chapter or in any local ordinances; or~~

~~2. The owner or operator allows a person who has not obtained a license to practice as a tattooer, limited term tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer unless the person is duly enrolled as an apprentice.~~

~~C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;~~

~~2. The owner or director of the approved school permits or allows a person to teach in the school without a current tattooing instructor certificate; or~~

~~3. The instructor, owner or director is guilty of fraud or deceit in the teaching of tattooing.~~

~~D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of tattooing.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a 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 conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a parlor, salon, or school, a person who has not obtained a license or guest tattooer license to practice as a tattooer or permanent cosmetic tattooer unless the person is duly enrolled as an apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate to practice as a tattooing or permanent cosmetic tattooing instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practice of tattooing, or the operation of tattoo parlors or permanent cosmetic tattooing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

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 (18VAC41-50)

~~Tattooer Examination & License Application, A425-1231EXLIC (eff. 9/2011)~~

~~Tattoo Training & Experience Verification Form, A425-12TATTREXP (eff. 9/2011)~~

Tattooing Apprenticeship Sponsor Application, A425-12TATSPON (eff. 9/2011)

Tattooer Apprenticeship Certification Application, A425-1234TAC (eff. 9/2011)

Tattoo Apprenticeship Completion Form, A425-12TAC (eff. 9/2011)

~~Tattoo Client Disclosure Form, A425-12DIS, A425-12TDIS (eff. 9/2011)~~

~~Limited Term Tattooer License Application, A450-1233LIC v8 (rev. 9/2016)~~

~~Limited Term Tattoo Parlor License Application, A450-1235LIC v5 (rev. 9/2016)~~

~~Permanent Cosmetic Tattooer Examination & License Application, A425-1236EXLIC (eff. 9/2011)~~

~~Master Permanent Cosmetic Tattooer Examination & License Application, A425-1237EXLIC (eff. 9/2011)~~

~~License by Endorsement Application, A450-1213END v9 (rev. 9/2016)~~

~~Training & Experience Verification Form, A425-1213TREXP (eff. 9/2011)~~

~~Salon, Shop, Spa & Parlor License/Reinstatement Application, A450-1213BUS-v8 (rev. 9/2016)~~

~~Licensure Fee Notice, A450-1213FEE-v6 (rev. 9/2016)~~

~~Instructor Certification Application, A450-1213INST-v7 (rev. 9/2016)~~

~~Individuals - Reinstatement Application, A450-1213REI-v8 (rev. 9/2016)~~

~~School License Application, A450-1213SCHL-v9 (rev. 9/2016)~~

~~School Reinstatement Application, A450-1213SCH-REIN-v2 (rev. 9/2016)~~

Tattooer Examination & License Application, A450-1231EXLIC (rev. 7/2019)

Tattoo Client Disclosure Form, A450-12TDIS (rev. 4/2013)

Limited Term Tattoo Parlor License Application, A450-1235LIC-v6 (rev. 7/2019)

Permanent Cosmetic Tattooer Examination & License Application, A450-1236EXLIC-v13 (rev. 7/2019)

Master Permanent Cosmetic Tattooer Examination & License Application, A450-1237EXLIC-v11 (rev. 7/2019)

License by Endorsement Application, A450-1213END-v10 (rev. 2/2017)

Training & Experience Verification Form, A450-1213TREXP-v6 (eff. 2/2017)

Salon, Shop, Spa & Parlor License/Reinstatement Application, A450-1213BUS-v12 (rev. 7/2019)

Licensure Fee Notice, A450-1213FEE-v7 (rev. 4/2017)

Instructor Certification Application, A450-1213INST-v11 (rev. 7/2019)

Individuals - Reinstatement Application, A450-1213REI-v9 (rev. 2/2017)

School License Application, A450-1213SCHL-v11 (rev. 2/2017)

School Reinstatement Application, A450-1213SCH-REIN-v5 (rev. 3/2017)

Convention Tattooer License Application, A450-1233COVLIC-v1 (eff. 7/2019)

Guest Tattooer License Application, A450-1233GLIC-v1 (eff. 7/2019)

Part I
General

18VAC41-60-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Apprenticeship program" means an approved body-piercing training program conducted by an approved apprenticeship sponsor.

"Apprenticeship sponsor" means an individual approved to conduct body-piercing apprenticeship training who meets the qualifications in 18VAC41-60-70.

"Aseptic technique" means a hygienic practice that prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

"Body piercer ear only" means any person who uses only a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both for compensation.

"Body piercing ear only" means the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

"Body-piercing ear only salon" means any place in which a fee is charged for the act of using a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Gratuitous services" as used in § 54.1-701.5 of the Code Virginia means providing body-piercing services without receiving compensation or reward, or obligation. Gratuitous services do not include services provided at no charge when goods are purchased.

"Licensee" means any person, partnership, ~~association,~~ corporation, limited liability company, ~~or corporation~~ sole proprietorship, limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology as defined in § 54.1-700 of the Code of Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Sterilization area" means a separate room or area separate from workstations with restricted client access in which body-piercing instruments are cleaned, disinfected, and sterilized.

"Temporary location" means a fixed location at which body piercing is performed for a specified length of time of not more than seven days in conjunction with a single event or celebration.

Part II
Entry

18VAC41-60-20. General requirements.

A. ~~In order to receive a license as a body piercer in compliance with § 54.1-703 of the Code of Virginia, an applicant must~~ Any individual wishing to engage in body piercing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

1. The applicant shall be in good standing as a body piercer in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in ~~another~~ Virginia or any other jurisdiction in connection with the applicant's practice as a body piercer. This disclosure includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure ~~whether~~ if he has been previously licensed in Virginia as a body piercer.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in body piercing and body piercing ear only. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this subdivision. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia body-piercing license laws and ~~the board's body-piercing regulations~~ this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose ~~a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a 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. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~ the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by a designated testing service.

~~6. Persons who (i) make application between April 1, 2007, and March 31, 2008; (ii) have completed three years of documented work experience within the preceding five years as a body piercer; and (iii) have completed a minimum of five hours of health education including but not limited to blood borne disease, sterilization, and aseptic techniques related to body piercing and first aid and CPR that is acceptable to the board are not required to complete subdivision 5 of this subsection.~~

B. Eligibility to sit for board-approved body-piercer examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved body-piercing apprenticeship program in a Virginia licensed body-piercing salon shall be eligible to sit for the examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories. Any person completing a body-piercing training or apprenticeship program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training or apprenticeship to be eligible for examination. If less than required hours of body-piercing training or body-piercing apprenticeship was completed, an applicant must submit (i) documentation acceptable to the board verifying the completion of a substantially equivalent body-piercing training or body-piercing apprenticeship or documentation of three years of work experience within the preceding five years as a body piercer and (ii) documentation of completion of a minimum of five hours of health education to include ~~but not limited to blood borne~~ (a) bloodborne disease, sterilization, and aseptic techniques related to body piercing ~~and~~; (b) first aid; and (c) CPR that is acceptable to the board in order to be eligible for examination.

C. In order to receive a license as a body piercer ear only, an applicant must meet the following qualifications:

1. The applicant shall have completed a minimum of three hours of health education to include ~~but not limited to blood borne~~ bloodborne disease and first aid that is acceptable to the board and provide verification of training on a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both and aftercare of piercing.

2. The applicant shall be in good standing in every jurisdiction where licensed, certified, or registered. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's licensed, certified, or registered practice. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia in any profession regulated by the board.

3. The applicant shall disclose his physical address. A post office box is not acceptable.

4. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia body-piercing license laws and the board's body-piercing regulations.

5. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose ~~a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a 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. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~ the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18VAC41-60-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a body piercer in any other state or jurisdiction of the United States and who has completed a training or apprenticeship program and an examination that is substantially equivalent to that required by this chapter may be issued a ~~body piercer~~ body piercer license without an examination. The applicant must also meet the requirements set forth in 18VAC41-60-20 A 1 through A 4.

18VAC41-60-40. Examination requirements and fees.

A. Applicants for initial licensure shall pass an examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

C. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

D. Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application.

E. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.

F. Any candidate failing to apply for initial licensure within five years of passing the written examination shall be required to retake the examination. Records of examinations shall be maintained for a maximum of five years.

18VAC41-60-50. ~~Reexamination requirements.~~ (Repealed.)

~~Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.~~

18VAC41-60-60. ~~Examination administration.~~ (Repealed.)

~~A. The examinations may be administered by the board or the designated testing service.~~

~~B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.~~

~~C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed $225 per candidate.~~

18VAC41-60-80. Salon license.

A. Any ~~individual~~ firm wishing to operate a body-piercing salon or body-piercing ear only salon shall obtain a salon license in compliance with § 54.1-704.1 of the Code of Virginia~~.~~ and shall meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed salon in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any body-piercing salon or body-piercing ear only salon or practice of the profession. This disclosure includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as a body-piercing salon or body-piercing ear only salon.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a body-piercing salon or body-piercing ear only salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this subdivision. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia body-piercing license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. A body-piercing salon license or body-piercing ear only salon license shall not be transferable and shall bear the same name and address of the business. Any changes in the name, or address, ~~or ownership~~ of the salon shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for ~~reporting such changes in writing to the board~~ applying for a new license within 30 days of the changes.

C. ~~In the event of a closing of a body piercing salon or body piercing ear only salon, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board.~~ Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

~~D.~~ E. Any ~~individual~~ firm wishing to operate a body-piercing salon in a temporary location must have a body-piercing salon license issued by the board.

Part IV
~~Renewal/Reinstatement~~ Renewal and Reinstatement

18VAC41-60-110. License renewal required.

All ~~body piercer~~ body piercer, ~~body piercer~~ body piercer ear only, body-piercing salon, and body-piercing ear only salon licenses shall expire two years from the last day of the month in which they were issued.

18VAC41-60-120. Continuing education requirement.

All licensed body piercers shall be required to satisfactorily complete a minimum of five hours of health education to include ~~but not limited to blood borne~~ (i) bloodborne disease, sterilization, and aseptic techniques related to body piercing ~~and~~; (ii) first aid; and (iii) CPR during their licensed term. All licensed body piercers ear only shall be required to satisfactorily complete a minimum of three hours of health education to include ~~but not limited to blood borne~~ bloodborne disease and first aid during their licensed term. Documentation of training completion shall be provided at the time of renewal along with the required fee.

18VAC41-60-140. Failure to renew.

A. When ~~a body piercer~~ an individual or ~~body piercer ear only~~ business entity fails to renew their license within 30 days following its expiration date, the licensee shall meet the renewal requirements prescribed in 18VAC41-60-120 and 18VAC41-60-130 and apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.

B. When ~~a body piercer or body piercer ear only~~ an individual or business entity fails to renew ~~his~~ its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former ~~body piercer~~ licensee shall apply for licensure as a new applicant, shall meet all current application requirements, shall pass the board's current examination if applicable, and shall receive a new license. ~~To resume practice, the former body piercer ear only licensee shall apply for licensure as a new applicant, shall meet all current application requirements, and shall receive a new license.~~

~~C. When a body piercing salon or body piercing ear only salon fails to renew its license within 30 days following the expiration date, it shall be required to apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application along with the required renewal and reinstatement fees.~~

~~D. When a body piercing salon or body piercing ear only salon fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~E.~~ C. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

~~F.~~ D. When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the ~~previous expiration date of the license~~ date of the last day of the month of reinstatement.

~~G.~~ E. A licensee ~~who~~ that reinstates ~~his~~ its license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

~~H.~~ F. A licensee ~~who~~ that fails to reinstate ~~his~~ its license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board

of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

18VAC41-60-190. Physical facilities.

A. A body-piercing salon or body-piercing ear only salon must be in a permanent building, which must be in a location permissible under local zoning codes, if any. If applicable, the body-piercing salon or body-piercing ear only salon shall be separated from any living quarters by complete floor to ceiling partitioning and shall contain no access to living quarters.

B. The body-piercing salon, body-piercing ear only salon, or temporary location shall be maintained in a clean and orderly manner.

C. A body-piercing salon, body-piercing ear only salon, or temporary location shall have a blood spill clean-up kit in the work area.

D. Work surfaces in a body-piercing salon, body-piercing ear only salon, or temporary location shall be cleaned with an EPA-registered, hospital grade disinfectant. Surfaces that come in contact with blood or other body fluids shall be immediately disinfected with an EPA-registered germicide solution. Appropriate personal protective equipment shall be worn during cleaning and disinfecting procedures.

E. In a body-piercing salon, body-piercing ear only salon, or temporary location, cabinets or containers for the storage of instruments, single-use articles, and other utensils shall be provided for each operator and shall be maintained in a sanitary manner.

F. In a body-piercing salon, body-piercing ear only salon, or temporary location, bulk single-use articles shall be commercially packaged and handled in such a way as to protect ~~them~~ the articles from contamination.

G. In a body-piercing salon, body-piercing ear only salon, or temporary location, all materials applied to the human skin shall be from single-use articles or transferred from bulk containers to single use containers and shall be disposed of after each use.

H. In a body-piercing salon or body-piercing ear only salon, the walls, ceilings, and floors shall be kept in good repair. The body-piercing area shall be constructed of smooth, hard, surfaces that are nonporous, free of open holes or cracks, light colored, and easily cleaned. New physical facilities shall not include any dark-colored surfaces in the body-piercing area. Existing physical facilities with dark-colored surfaces in the body-piercing area shall replace the dark-colored surfaces with light-colored surfaces whenever the facilities are extensively remodeled or upon relocation of the business.

I. A body-piercing salon, body-piercing ear only salon, or temporary location shall have adequate lighting of at least 50 foot-candles of illumination in the body-piercing and sterilization areas.

J. In a body-piercing salon, body-piercing ear only salon, or temporary location, adequate mechanical ventilation shall be provided.

K. A body-piercing salon, body-piercing ear only salon, or temporary location shall be equipped with hand-cleaning facilities for its personnel with unobstructed access to the body-piercing area or body-piercing ear only area such that the body piercer or body piercer ear only can return to the area without having to touch anything with his hands. Hand-cleaning facilities shall be equipped either with hot and cold or tempered running water under pressure and liquid germicidal soap or with a sanitizing solution to clean hands. Hand-cleaning facilities shall be equipped with single-use towels or mechanical hand drying devices and a covered refuse container. Such facilities shall be kept clean and in good repair. All facilities must have running water and soap accessible for cleaning of hands contaminated by body fluids.

L. Animals are not permitted in the body-piercing salon, body-piercing ear only salon, or temporary location except for guide or service animals accompanying persons with disabilities or nonmammalian animals in enclosed glass containers such as fish aquariums, which shall be outside of the body-piercing area or sterilization ~~areas~~ area. No animals are allowed in the body-piercing area, body-piercing ear only area, or sterilization ~~areas~~ area.

M. In a body-piercing salon, body-piercing ear only salon, or temporary location, the use of tobacco products and consumption of alcoholic beverages shall be prohibited in the body-piercing area, body-piercing ear only area, or sterilization ~~areas~~ area.

N. In a body-piercing salon, body-piercing ear only salon, or temporary location, no food or drink will be stored or consumed in the body-piercing area, body-piercing ear only area, or sterilization ~~areas~~ area.

O. In a body-piercing salon, body-piercing ear only salon, or temporary location, if body-piercing or body-piercing ear only is performed where cosmetology services are provided, it shall be performed in an area that is separate and enclosed.

P. All steam sterilizers shall be biological spore tested at least monthly.

Q. Biological spore tests shall be verified through an independent laboratory.

R. Biological spore test records shall be retained for a period of three years and made available upon request.

S. Steam sterilizers shall be used only for instruments used by the salon's employees.

18VAC41-60-220. Grounds for license revocation or suspension or probation; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.

~~A.~~ The board may, in considering the totality of the circumstances, fine any licensee and suspend, place on probation, or revoke or refuse to renew or reinstate any license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter if ~~the board~~ it finds that the licensee or applicant:

1. ~~The licensee is~~ Is incompetent or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to (i) practice as a body piercer or body piercer ear only, or (ii) operate a body piercing salon;

2. ~~The licensee or applicant is~~ Is convicted of fraud or deceit in the practice body piercing or body piercing ear only;

3. ~~The licensee or applicant attempted~~ Attempted to obtain, obtained, renewed, or reinstated a license by false or fraudulent representation;

4. ~~The licensee or applicant violates~~ Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which body piercers or body piercers ear only may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent in the performance of his duties any federal, state, or local law, regulation, or ordinance governing body piercing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

~~5. The licensee or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with this chapter;

~~6. A licensee fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license~~. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board~~;

~~7. The licensee or applicant~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~8. The licensee or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit which has been the subject of disciplinary action in any other jurisdiction;

~~9. The licensee or applicant has been convicted or found guilty in any jurisdiction of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this section. The record of a 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; or~~

~~10. The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any misdemeanor or felony.~~

~~B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any body piercing salon or body piercing ear only salon or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. The owner or operator of the body piercing salon or body piercing ear only salon fails to comply with the facility requirements of body piercing salons or body piercing ear only salons provided for in this chapter or in any local ordinances; or~~

~~2. The owner or operator allows a person who has not obtained a license to practice as a body piercer or body piercer ear only unless the person is duly enrolled as an apprentice.~~

~~C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health~~

~~and sanitation for the practice of body piercing or body piercing ear only.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a 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 conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a salon, a person who has not obtained a license to practice as a body piercer or body piercer ear only unless the person is duly enrolled as an apprentice;

15. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practice of body piercing, or the operation of body-piercing salon or body-piercing ear only salon; or

16. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

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 (18VAC41-60)

~~Body Piercer Examination & License Application, A425-1241EXLIC (eff. 9/2011)~~

~~Body Piercing Training & Experience Verification Form, A425-12BPTREXP (eff. 9/2011)~~

Body-Piercing Apprenticeship Sponsor Application, A425-12BPSPON (eff. 9/2011)

Body-Piercing Apprentice Certification Application, A425-1244BPAC (eff. 9/2011)

Body-Piercing Apprenticeship Completion Form, A425-12BPAC (eff. 9/2011)

~~Body Piercing Client Disclosure Form, A425-12BPDIS (eff. 9/2011)~~

~~Body Piercer Ear Only License Application, A450-1245LIC-v6 (rev. 9/2016)~~

~~License by Endorsement Application, A450-1213END-v9 (rev. 9/2016)~~

~~Training & Experience Verification Form, A425-1213TREXP (eff. 9/2011)~~

~~Salon, Shop, Spa & Parlor License/Reinstatement Application, A450-1213BUS-v8 (rev. 9/2016)~~

~~Licensure Fee Notice, A450-1213FEE-v6 (rev. 9/2016)~~

~~Individuals - Reinstatement Application, A450-1213REI-v8 (rev. 9/2016)~~

Body Piercer Examination & License Application, A450-1241EXLIC-v13 (rev. 7/2019)

Body-Piercing Client Disclosure Form, A450-12BPDIS-v2 (rev. 4/2013)

Body Piercer Ear Only License Application, A450-1245LIC-v7 (rev. 7/2019)

License by Endorsement Application, A450-1213END-v10 (rev. 2/2017)

Training & Experience Verification Form, A450-1213TREXP-v6 (eff. 2/2017)

Salon, Shop, Spa & Parlor License/Reinstatement Application, A450-1213BUS-v12 (rev. 7/2019)

Licensure Fee Notice, A450-1213FEE-v7 (rev. 4/2017)

Individuals - Reinstatement Application, A450-1213REI-v9 (rev. 2/2017)

VA.R. Doc. No. R18-5125; Filed July 2, 2019, 10:38 a.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-26, 18VAC85-20-29, 18VAC85-20-90, 18VAC85-20-121, 18VAC85-20-122, 18VAC85-20-140, 18VAC85-20-220, 18VAC85-20-225, 18VAC85-20-235, 18VAC85-20-410).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 21, 2019.

Effective Date: September 16, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: 18VAC85-20 needs to be retained because its provisions protect the health and safety of patients who received medical care from a doctor licensed under the chapter. The regulatory changes are consistent with the principle that regulations should be clearly written and easily understandable.

Rationale for Using Fast-Track Rulemaking Process: As required by Executive Order 14 (2018), the Board of Medicine conducted a periodic review of this chapter. The amendments are clarifying or intended for consistency with current practice. There are no substantive changes, so the amendments are not expected to be controversial.

Substance: Pursuant to its periodic review of 18VAC85-20, the board amended the regulation to delete outdated provisions and clarify others consistent with current practice.

Issues: There are no substantive changes to the regulation, so there are no real advantages or disadvantages to the public. Most of the amendments are technical and clarifying.

There are no advantages or disadvantages to the agency or the Commonwealth, except clearer regulations may result in fewer inquiries to staff.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a periodic review,[1] the Board of Medicine (Board) proposes to delete outdated provisions and clarify several others consistent with current practice.

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

Estimated Economic Impact. The Board proposes to delete outdated provisions such as dates that are no longer necessary, update terminology, update names of an accrediting body, clarify that teaching in a health care professional field qualifies for continuing education credits, and clarify that a single interaction that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient might be grounds for disciplinary action, etc. The proposed changes are not expected to create any economic impact beyond improving the accuracy and clarity of existing requirements.

Businesses and Entities Affected. There are 38,014 doctors of medicine, 3,473 doctors of osteopathic medicine, 541 doctors of podiatry, and 1,729 doctors of chiropractic regulated by the Board.

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

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

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

Real Estate Development Costs. The proposed amendments 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 amendments would not have costs on other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments would not impose adverse impacts on small businesses.

Adverse Impacts:

Businesses. The proposed amendments would not impose adverse impacts on businesses.

Localities. The proposed amendments would not adversely affect localities.

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

[1] http://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1647

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments remove outdated provisions, make a number of technical changes, and clarify for consistency with current practice.

18VAC85-20-26. Patient records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or ~~his~~ the patient's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage patient records and shall maintain timely, accurate, legible, and complete patient records.

D. Practitioners shall maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

1. Records of a minor child, including immunizations, shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or ~~his~~ the patient's personal representative; or

3. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

E. ~~From October 19, 2005, practitioners~~ Practitioners shall post information or in some manner inform all patients concerning the ~~time frame~~ timeframe for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

F. When a practitioner is closing, selling, or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

18VAC85-20-29. Practitioner responsibility.

A. A practitioner shall not:

1. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

2. Engage in an egregious pattern of disruptive behavior or an interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

3. Exploit the ~~practitioner/patient~~ practitioner and patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 2 of this section.

18VAC85-20-90. Pharmacotherapy for weight loss.

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;

2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;

3. A diet and exercise program for weight loss is prescribed and recorded;

4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy;

5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a supervising or ~~collaborating~~ patient care team physician, a physician assistant or nurse practitioner may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section.

18VAC85-20-121. Educational requirements: graduates of approved institutions.

A. Such an applicant shall be a graduate of an institution that meets the criteria appropriate to the profession in which he seeks to be licensed, which are as follows:

1. For licensure in medicine. The institution shall be approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

2. For licensure in osteopathic medicine. The institution shall be approved or accredited by the ~~Bureau of Professional Education of the~~ American Osteopathic Association Committee on Osteopathic College Accreditation or any other organization approved by the board.

3. For licensure in podiatry. The institution shall be approved and recommended by the Council on Podiatric Medical Education of the American Podiatric Medical Association or any other organization approved by the board.

B. Such an applicant for licensure in medicine, osteopathic medicine, or podiatry shall provide evidence of having completed 12 months of satisfactory postgraduate training as an intern or resident in one program or institution when such a program or institution is approved by an accrediting agency recognized by the board for internship and residency training.

C. For licensure in chiropractic.

1. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

2. If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

~~2. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.~~

18VAC85-20-122. Educational requirements: graduates and former students of institutions not approved by an accrediting agency recognized by the board.

A. A graduate of an institution not approved by an accrediting agency recognized by the board shall present documentary evidence that he:

1. Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

2. Has received a degree from the institution.

3. Has fulfilled the applicable requirements of § 54.1-2930 of the Code of Virginia.

~~3.~~ 4. Has obtained a certificate from the Educational Council of Foreign Medical Graduates (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a province of Canada may be accepted in lieu of ECFMG certification.

~~4.~~ 5. Has had supervised clinical training as a part of his curriculum in an approved hospital, institution, or school of medicine offering an approved residency program in the specialty area for the clinical training received or in a program acceptable to the board and deemed a substantially equivalent experience, if such training was received in the United States.

~~5.~~ 6. Has completed one year of satisfactory postgraduate training as an intern, resident, or clinical fellow. The one year shall include at least 12 months in one program or institution approved by an accrediting agency recognized by the board for internship or residency training or in a clinical fellowship acceptable to the board in the same or a related field.

The board may substitute continuous full-time practice of five years or more with a limited professorial license in Virginia and one year of postgraduate training in a foreign country in lieu of one year of postgraduate training.

~~6. Has received a degree from the institution~~.

B. A former student who has completed all degree requirements except social services and postgraduate internship at a school not approved by an accrediting agency recognized by the board shall be considered for licensure provided that he:

1. Has fulfilled the requirements of subdivisions A 1 and A 3 through ~~5~~ A 6 of this section;

2. Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association; and

3. Presents a document issued by the school certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

Part IV
Licensure: Examination Requirements

18VAC85-20-140. Examinations, general.

A. The Executive Director of the Board of Medicine or his designee shall review each application for licensure and in no

case shall an applicant be licensed unless there is evidence that the applicant has passed an examination equivalent to the Virginia Board of Medicine examination required at the time he was examined and meets all requirements of Part III (18VAC85-20-120 et seq.) of this chapter. If the executive director or his designee is not fully satisfied that the applicant meets all applicable requirements of Part III of this chapter and this part, ~~he~~ the executive director or his designee shall refer the application to the Credentials Committee for a determination on licensure.

B. A ~~Doctor~~ doctor of ~~Medicine~~ medicine or ~~Osteopathic Medicine~~ osteopathic medicine who has passed the examination of the National Board of Medical Examiners or of the National Board of Osteopathic Medical Examiners, Federation Licensing Examination, or the United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada or other such examinations as prescribed in § 54.1-2913.1 of the Code of Virginia may be accepted for licensure.

C. A ~~Doctor~~ doctor of ~~Podiatry~~ podiatry who has passed the National Board of Podiatric Medical Examiners examination and has passed a clinical competence examination acceptable to the board may be accepted for licensure.

D. A ~~Doctor~~ doctor of ~~Chiropractic~~ chiropractic who has met the requirements of one of the following may be accepted for licensure:

1. An applicant who graduated after January 31, 1996, shall document successful completion of Parts I, II, III, and IV of the National Board of Chiropractic Examiners examination (NBCE).

2. An applicant who graduated from January 31, 1991, to January 31, 1996, shall document successful completion of Parts I, II, and III of the National Board of Chiropractic Examiners examination (NBCE).

3. An applicant who graduated from July 1, 1965, to January 31, 1991, shall document successful completion of Parts I, II, and III of the NBCE, or Parts I and II of the NBCE and the Special Purpose Examination for Chiropractic (SPEC), and document evidence of licensure in another state for at least two years immediately preceding his application.

4. An applicant who graduated prior to July 1, 1965, shall document successful completion of the SPEC, and document evidence of licensure in another state for at least two years immediately preceding his application.

E. ~~The following provisions shall apply for applicants taking Step 3 of the United States Medical Licensing Examination or the Podiatric Medical Licensing Examination: 1. Applicants for licensure in medicine and osteopathic medicine may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed Steps 1 and 2 of the United States Medical Licensing Examination (USMLE). 2.~~ Applicants who sat for the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensure Examination (COMLEX-USA) shall provide evidence of passing ~~Steps 1, 2, and 3~~ all steps within a 10-year period unless the applicant is board certified in a specialty approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists of the American Osteopathic Association. ~~3. Applicants shall have completed the required training or be engaged in their final year of required postgraduate training.~~

~~4.~~ F. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia.

18VAC85-20-220. Temporary licenses to interns and residents.

A. An intern or resident applying for a temporary license to practice in Virginia shall:

1. Successfully complete the preliminary academic education required for admission to examinations given by the board in his particular field of practice, and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the applicant's chief or director of graduate medical education of the approved internship or residency program specifying acceptance. The beginning and ending dates of the internship or residency shall be specified.

3. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent if the candidate graduated from a school not approved by an accrediting agency recognized by the board.

B. The intern or resident license applies only to the practice in the hospital or outpatient clinics where the internship or residency is served. Outpatient clinics in a hospital or other facility must be a recognized part of an internship or residency program.

C. The intern or resident license shall be renewed annually upon the recommendation of the chief or director of graduate medical education of the internship or residency program.

A residency program transfer request shall be submitted to the board in lieu of a full application.

D. The extent and scope of the duties and professional services rendered by the intern or resident shall be confined to persons who are bona fide patients within the hospital or who

receive treatment and advice in an outpatient department of the hospital or outpatient clinic where the internship or residency is served.

E. The intern and resident shall be responsible and accountable at all times to a fully licensed member of the ~~staff~~ faculty where the internship or residency is served. The intern and resident is prohibited from employment outside of the graduate medical educational program where a full license is required.

F. The intern or resident shall abide by the respective accrediting requirements of the internship or residency as approved by the Liaison Council on Graduate Education of the American Medical Association, American Osteopathic Association, American Podiatric Medical Association, or Council on Chiropractic Education.

18VAC85-20-225. Registration for voluntary practice by out-of-state licenses.

Any doctor of medicine, osteopathic medicine, podiatry, or chiropractic who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision A 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates, and the location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision A 27 of § 54.1-2901 of the Code of Virginia.

18VAC85-20-235. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall attest to completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession.

a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

a. Up to 15 of the Type 2 continuing education hours may be satisfied through delivery of services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for one hour of providing such volunteer services. For the purpose of continuing education credit for voluntary service, documentation by the health department or free clinic shall be acceptable.

b. Type 2 hours may include teaching in a health care profession field.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who:

1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or

2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

18VAC85-20-410. Requirements for low-risk, medium-risk, or high-risk sterile mixing, diluting, or reconstituting.

A. Any mixing, diluting, or reconstituting of sterile products that does not meet the criteria for immediate-use as set forth in 18VAC85-20-400 A shall be defined as low-risk, medium-risk, or high-risk compounding under the definitions of Chapter 797 of the U.S. Pharmacopeia (USP).

B. ~~Until July 1, 2007, all low-, medium-, or high-risk mixing, diluting or reconstituting of sterile products shall comply with the standards for immediate-use mixing, diluting or reconstituting as specified in 18VAC85-20-400. Beginning July 1, 2007, doctors~~ Doctors of medicine or osteopathic medicine who engage in low-risk, medium-risk, or high-risk mixing, diluting, or reconstituting of sterile products shall comply with all applicable requirements of the USP Chapter 797. Subsequent changes to the USP Chapter 797 shall apply within one year of the official announcement by USP.

C. A current copy, in any published format, of USP Chapter 797 shall be maintained at the location where low-risk, medium-risk, or high-risk mixing, diluting, or reconstituting of sterile products is performed.

VA.R. Doc. No. R19-5663; Filed July 1, 2019, 8:11 p.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-20, 18VAC90-40-55, 18VAC90-40-70, 18VAC90-40-110; repealing 18VAC90-40-50, 18VAC90-40-60).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.1 of the Code of Virginia.

Public Hearing Information:

August 27, 2019 - 8:30 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Training Room 2, Henrico, VA 23233

Public Comment Deadline: September 20, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2957.01 of the Code of Virginia provides requirements for prescription of certain controlled substances and devices by licensed nurse practitioners.

Purpose: The purpose of the proposed regulatory action is to eliminate unnecessary regulations and costs for nurse practitioners. The Code of Virginia specifies certain requirements for prescriptive authority for nurse practitioners but does not require maintenance of a separate license, which is required by regulation. Therefore, the boards propose to retain the requirements for prescriptive authority and for continuing education, but eliminate the requirement to renew the license. Requirements for continuing competency and disclosure to patients in accordance with § 54.1-2957.1 will remain in effect to protect the health and safety of patients.

Substance: This regulatory action eliminates the requirement for renewal of prescriptive authority for nurse practitioners and reduces the fee for an application for prescriptive from $75 to $35. Requirements for continuing competency and disclosure to patients remain in effect, as mandated by the Code of Virginia.

Issues: There are no advantages or disadvantages to the public. The amendments will benefit nurse practitioners and make their practice less costly. There are no advantages or disadvantages to the agency or the Commonwealth. The loss of revenue can be absorbed in the budget of the Board of Nursing without necessitating any increase in fees.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Boards of Nursing and Medicine (Boards) propose to eliminate the requirement for renewal of prescriptive authority for a nurse practitioner and reduce the fee for initial application for prescriptive authority from $75 to $35.

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

Estimated Economic Impact. The current regulation includes a $35 biennial fee for renewal of prescriptive authority for nurse practitioners. The proposal to eliminate the requirement for renewal of prescriptive authority would save nurse practitioners $35 every other year, as well as the time associated with applying for renewal. The Boards do not believe eliminating this requirement would affect health and safety.

The Boards' proposal to reduce the fee for initial application for prescriptive authority from $75 to $35 would save nurse practitioners $40 when they first apply for the authority. The proposed reduction of the fee for initial application for

prescriptive authority, and the proposed elimination of the requirement for renewal of prescriptive authority, would both reduce revenue received by the Board of Nursing (Board). According to the Department of Health Professions, the Board would continue to have sufficient resources with the reduction of revenue. Given the benefits for nurse practitioners and lack of impact on health and safety and the Board's ability to operate, both proposals should produce net benefits.

Businesses and Entities Affected. The proposed amendments affect the 7,417 licensed nurse practitioners with prescriptive authority, as well as future applicants for nurse practitioners prescriptive authority

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

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

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

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

Small Businesses:

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

Costs and Other Effects. The proposed amendments are unlikely to significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments eliminate the requirement for renewal of prescriptive authority for a nurse practitioner and reduce the fee for an application for prescriptive authority to $35.

18VAC90-40-20. Authority and administration of regulations.

A. The statutory authority for this chapter is found in §§ 54.1-2957.01, 54.1-3303, 54.1-3401, and 54.1-3408 of the Code of Virginia.

B. Joint boards of nursing and medicine.

1. The Committee of the Joint Boards of Nursing and Medicine shall be appointed to administer this chapter governing prescriptive authority.

2. The boards hereby delegate to the Executive Director of the Virginia Board of Nursing the authority to issue the initial authorization ~~and biennial renewal~~ to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-40-55. Questions of eligibility shall be referred to the committee.

3. All records and files related to prescriptive authority for nurse practitioners shall be maintained in the office of the Board of Nursing.

18VAC90-40-50. ~~Renewal of prescriptive authority.~~ (Repealed.)

~~An applicant for renewal of prescriptive authority shall:~~

~~1. Renew biennially at the same time as the renewal of licensure to practice as a nurse practitioner in Virginia.~~

~~2. Submit a completed renewal form attesting to compliance with continuing competency requirements set forth in 18VAC90-40-55 and the renewal fee as prescribed in 18VAC90-40-70.~~

18VAC90-40-55. Continuing competency requirements.

A. ~~In order to renew prescriptive authority, a~~ A licensee with prescriptive authority shall meet continuing competency requirements for biennial renewal as a licensed nurse practitioner. Such requirements shall address issues such as ethical practice, an appropriate standard of care, patient safety, and appropriate communication with patients.

B. A nurse practitioner with prescriptive authority shall obtain a total of eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium in addition to the minimal requirements for compliance with subsection B of 18VAC90-30-105.

C. The nurse practitioner with prescriptive authority shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of ~~its~~ their licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate to the committee the authority to grant an extension or an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-40-60. ~~Reinstatement of prescriptive authority.~~ (Repealed.)

~~A. A nurse practitioner whose prescriptive authority has lapsed may reinstate within one renewal period by payment of the current renewal fee and the late renewal fee.~~

~~B. A nurse practitioner who is applying for reinstatement of lapsed prescriptive authority after one renewal period shall:~~

~~1. File the required application;~~

~~2. Provide evidence of a current, unrestricted license to practice as a nurse practitioner in Virginia;~~

~~3. Pay the fee required for reinstatement of a lapsed authorization as prescribed in 18VAC90-40-70; and~~

~~4. If the authorization has lapsed for a period of two or more years, the applicant shall provide proof of:~~

~~a. Continued practice as a licensed nurse practitioner with prescriptive authority in another state; or~~

~~b. Continuing education, in addition to the minimal requirements for current professional certification, consisting of four contact hours in pharmacology or pharmacotherapeutics for each year in which the prescriptive authority has been lapsed in the Commonwealth, not to exceed a total of 16 hours.~~

~~C. An applicant for reinstatement of suspended or revoked authorization shall:~~

~~1. Petition for reinstatement and pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70;~~

~~2. Present evidence of competence to resume practice as a nurse practitioner with prescriptive authority; and~~

~~3. Meet the qualifications and resubmit the application required for initial authorization in 18VAC90-40-40.~~

18VAC90-40-70. Fees for prescriptive authority.

~~A.~~ The following fees have been established by the boards:

1. Initial issuance of prescriptive authority	~~$75~~ $35
~~2. Biennial renewal~~	~~$35~~
~~3. Late renewal~~	~~$15~~
~~4. Reinstatement of lapsed authorization~~	~~$90~~
~~5. Reinstatement of suspended or revoked authorization~~	~~$85~~
~~6. Duplicate of authorization~~	~~$15~~
~~7.~~ 2. Return check charge	$35

~~B. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:~~

~~Biennial renewal~~	~~$26~~

18VAC90-40-110. Disclosure.

A. The nurse practitioner shall include on each prescription ~~written~~ issued or dispensed his signature and the Drug Enforcement Administration (DEA) number, when applicable. If ~~his~~ the nurse practitioner's practice agreement authorizes prescribing of only Schedule VI drugs and the nurse practitioner does not have a DEA number, he shall include the prescriptive authority number as issued by the boards.

B. The nurse practitioner shall disclose to patients at the initial encounter that he is a licensed nurse practitioner. Such disclosure may be included on a prescription pad or may be given in writing to the patient.

C. The nurse practitioner shall disclose, upon request of a patient or a patient's legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

VA.R. Doc. No. R18-5352; Filed June 27, 2019, 11:57 a.m.

BOARD OF COUNSELING

Proposed Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-49).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-50).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-60).

Statutory Authority: §§ 54.1-2400, 54.1-3503, and 54.1-3506 of the Code of Virginia.

Public Hearing Information:

August 16, 2019 - 9:05 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA 23233.

Public Comment Deadline: September 20, 2019.

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

Basis: Regulations are promulgated under the authority of § 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. Specific authority for regulation of the profession of counseling is found in § 54.1-3503 of the Code of Virginia, which requires that the Board of Counseling regulate the practice of counseling, substance abuse treatment, and marriage and family therapy and in § 54.1-3506, which provides that in order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in the statute, it is necessary to hold a license.

Purpose: The proposed regulatory action will allow persons who graduated from foreign educational programs in counseling to qualify for licensure by providing documentation from a credentialing service of the equivalency of the foreign education and experience to that required of applicants who trained in the United States. To the extent some applicants may be able to qualify for licensure, the public may benefit from an increased supply of mental health providers. Such credentialing services already evaluate the qualifications of other health and mental health providers, so there is assurance of minimal competency to practice counseling safely for the health and welfare of clients.

Substance: 18VAC115-20-49 sets out the degree program requirements for licensure as a professional counselor, with which graduates of foreign programs cannot comply. 18VAC115-20-51 sets out the coursework requirements that must be met. Foreign-trained graduates find it very difficult to meet those requirements because board staff does not have adequate information to review credentials from a foreign country. Consequently, the amendment would add language similar to psychology regulations, which provide that graduates of programs that are not within the United States or Canada can qualify for licensure if the graduates can provide documentation from an acceptable credential evaluation service that allows the board to determine if the program meets the requirements set forth in the regulation.

There are similar provisions in 18VAC115-50-50 for marriage and family therapists and in 18VAC115-60-60 for substance abuse treatment practitioners.

Issues: There are no advantages or disadvantages to the public; the amendments will benefit a small number of applicants who are now unable to be initially licensed in Virginia.

There are no advantages or disadvantages to the agency or the Commonwealth, other than the amendment may facilitate licensure for a small number of counselors who can provide mental health services in the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to establish a pathway for individuals who graduated from foreign schools to obtain licensure as a professional counselor, marriage and family therapist, or a substance abuse treatment practitioner.

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

Estimated Economic Impact. Currently, this regulation requires graduation from a college or university accredited by a regional accrediting agency. Since degree programs in foreign countries are not regionally accredited, there is no pathway in Virginia for individuals with degrees from countries other than the United States or Canada to be initially licensed as a professional counselor, marriage and family therapist, or a substance abuse treatment practitioner.[1]

The Board proposes to allow foreign graduates to obtain licensure if they can provide documentation from an acceptable credential evaluation service that provides information to enable the Board to determine equivalency of the foreign program. According to the Department of Health Professions (DHP), the Board accepts credentialing evaluations from more than one source. Such credentialing services already evaluate the qualifications of other health and mental health providers such as psychology. Psychology foreign graduates can get an evaluation for a fee of $85, which includes an analysis, equivalency, certification, notarization, and mailing to one address. For a fee of $149, a more detailed (e.g., course-by-course analysis, credit, GPA calculation, and courses studied in addition to the basic evaluation) is also offered. DHP believes the Board may find it necessary to require the more detailed evaluation and expects no more than 10 to 20 foreign-trained graduates to apply per year.

The proposed amendments would benefit foreign-trained graduates who have an equivalent degree to those in the United States. This new pathway has the potential to add to the supply of professional counselors, marriage and family therapists, or substance abuse treatment practitioners. For a fee of $149, qualifying individuals would be able to obtain a license to practice as a professional mental health provider. In addition, this change would add slightly to the demand for services of the credential evaluation service businesses.

Businesses and Entities Affected. DHP expects no more than 10 to 20 foreign-trained graduates per year to apply under the proposed pathway to licensure. According to DHP, there are several credential evaluation service providers, all of which are likely small businesses.

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

Projected Impact on Employment. The proposed amendments would have a positive impact on the supply and employment of professional health care providers and demand for credential evaluation services.

Effects on the Use and Value of Private Property. The proposed amendments should have a positive but likely small impact on the asset values of credential evaluation services.

Real Estate Development Costs. The proposed amendments 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 amendments would not impose costs on small businesses. However, small businesses that hire affected professions would benefit from increased supply of such professionals. The expected impact on demand for credential evaluation services is also positive.

Alternative Method that Minimizes Adverse Impact

The proposed amendments would not impose adverse impacts on small businesses.

Adverse Impacts:

Businesses. The proposed amendments would not impose adverse impacts on businesses.

Localities. The proposed amendments would not adversely affect localities.

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

[1]If a foreign graduate is initially licensed in another state and has at least 24 out of the past 60 months of active clinical practice without discipline, he or she may qualify for licensure by endorsement in Virginia.

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments provide a pathway for a foreign-trained graduate in counseling to obtain licensure as a professional counselor, a marriage and family therapist, or a substance abuse treatment practitioner in the Commonwealth. The proposed amendments provide that graduates of programs that are not within the United States or Canada can qualify for licensure if the graduates can provide documentation from an acceptable credential evaluation service that allows the board to determine if the program meets the requirements set forth in the regulation.

18VAC115-20-49. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice counseling~~,~~ as defined in § 54.1-3500 of the Code of Virginia, ~~which~~ is offered by a college or university accredited by a regional accrediting agency, and ~~which~~ meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;

2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

B. Programs that are approved by CACREP or CORE are recognized as meeting the requirements of subsection A of this section.

C. Graduates of programs that are not within the United States or Canada shall provide documentation from an acceptable credential evaluation service that provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

18VAC115-50-50. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice marriage and family therapy as defined in § 54.1-3500 of the Code of Virginia from a college or university ~~which~~ that is accredited by a regional accrediting agency and ~~which~~ that meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare students to practice marriage and family therapy as documented by the institution;

2. There must be an identifiable marriage and family therapy training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

B. Programs that are approved by CACREP as programs in marriage and family ~~counseling/therapy~~ counseling or therapy or by COAMFTE are recognized as meeting the requirements of subsection A of this section.

C. Graduates of programs that are not within the United States or Canada shall provide documentation from an

acceptable credential evaluation service that provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

18VAC115-60-60. Degree program requirements.

A. The applicant shall have completed a graduate degree from a program that prepares individuals to practice substance abuse treatment or a related counseling discipline as defined in § 54.1-3500 of the Code of Virginia from a college or university accredited by a regional accrediting agency that meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;

2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

B. Programs that are approved by CACREP as programs in addictions counseling are recognized as meeting the requirements of subsection A of this section.

C. Graduates of programs that are not within the United States or Canada shall provide documentation from an acceptable credential evaluation service that provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

VA.R. Doc. No. R19-5643; Filed July 1, 2019, 8:09 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-60).**

Statutory Authority: §§ 54.1-2400 and 54.1-3506 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 21, 2019.

Effective Date: September 6, 2019.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system.

Specific authority for regulation of the profession of counseling is found in §§ 54.1-3503 and 54.1-3506 of the Code of Virginia.

Purpose: The proposed regulatory action will allow persons who have obtained a doctoral degree in counseling to become licensed with a smaller number of postgraduate hours in a supervised residency. The proposal accelerates the licensure process for those candidates and allows them to provide counseling services in independent practice more quickly. Since the practicum and internship hours are within a Commission on Accreditation for Marriage and Family Education (COAMFTE) or Council for Accreditation of Counseling and Related Educational Programs (CACREP) program and under the supervision of credentialed faculty, the board is assured of appropriate oversight to protect the health, safety, and welfare of the public.

Rationale for Using Fast-Track Rulemaking Process: In response to a petition for rulemaking, the board has adopted the amendment by fast-track rulemaking process because a similar change at the final stage of adoption requested for persons in residencies for professional counseling was fully supported by public comment.

Substance: An amendment to section 18VAC115-50-60 allows the acceptance of supervised internship or practicum hours of up to 900 direct or indirect hours and up to 100 supervision hours to residency requirements if (i) the hours are obtained in a COAMFTE or CACREP accredited doctoral program and (ii) the supervisor has an active professional counselor license.

Issues: The primary advantage of the amendment to the public is the ability of a supervisee with a doctoral degree to qualify for licensure with fewer hours in a residency. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a 2017 petition for rulemaking,[1] the Board of Counseling (Board) proposes to accept supervised practicum and internship hours in a Commission on Accreditation for Marriage and Family Education (COAMFTE) or Council for Accreditation of Counseling and Related Educational Programs (CACREP) accredited doctoral program to count as required hours for a residency in marriage and family therapy.

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

Estimated Economic Impact. An individual must complete a total of 3,400 hours in a supervised residency prior to becoming licensed as a professional marriage and family therapist. The residency must include a minimum of 200 hours of in-person supervision between the supervisor and the

resident in the consultation and review of marriage and family therapy services provided by the resident.

The Board proposes to amend 18VAC115-50 to allow up to 900 hours of the residency requirement and up to 100 of the required hours of in-person supervision to be satisfied by supervised practicum and internship hours in a COAMFTE or CACREP-accredited doctoral marriage and family therapy program. Assuming a workweek is 40 hours, the Board's proposal to accept up to 900 hours for the residency requirement could allow the fulfillment of the residency requirement to be completed by up to 22.5 weeks sooner.[2] This would be beneficial for individuals who have obtained such supervised practicum and internship hours in a COAMFTE or CACREP-accredited doctoral counseling program in that they may start practicing as a fully licensed professional marriage and family therapist sooner, and commensurately earn greater income. Given that the Board does not believe this proposal would permit unqualified individuals to become licensed, the proposal likely produces a net benefit.

Businesses and Entities Affected. There are one COAMFTE and four CACREP-accredited doctoral programs in the Commonwealth. However, currently only one of them (Virginia Tech) has a focus on marriage and family therapy. Students at that institution would also be affected.

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

Projected Impact on Employment. The proposed amendments do not significantly affect total employment. The proposals would allow some individuals to become employed as a fully licensed marriage and family therapist sooner.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=286

[2]900/40 = 22.5

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment recognizes hours acquired in an internship or practicum in doctoral programs accredited by Commission on Accreditation for Marriage and Family Education or Council for Accreditation of Counseling and Related Educational Programs as meeting a portion of the hours of supervised residency required for licensure.

18VAC115-50-60. Residency requirements.

A. Registration. Applicants who render marriage and family therapy services shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-50-50 to include completion of the coursework and internship requirement specified in 18VAC115-50-55; and

3. Pay the registration fee.

B. Residency requirements.

1. The applicant shall have completed no fewer than 3,400 hours of supervised residency in the role of a marriage and family therapist, to include 200 hours of in-person supervision with the supervisor in the consultation and review of marriage and family services provided by the resident. For the purpose of meeting the 200 hours of supervision required for a residency, in-person may also include the use of technology that maintains client confidentiality and provides real-time, visual contact between the supervisor and the resident. At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist.

a. Residents shall receive a minimum of one hour and a maximum of four hours of supervision for every 40 hours of supervised work experience.

b. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

c. Up to 20 hours of the supervision received during the supervised internship may be counted towards the 200 hours of in-person supervision if the supervision was provided by a licensed marriage and family therapist or a licensed professional counselor.

2. The residency shall include documentation of at least 2,000 hours in clinical marriage and family services of which 1,000 hours shall be face-to-face client contact with couples or families or both. The remaining hours may be spent in the performance of ancillary counseling services. For applicants who hold current, unrestricted licensure as a professional counselor, clinical psychologist, or clinical social worker, the remaining hours may be waived.

3. The residency shall consist of practice in the core areas set forth in 18VAC115-50-55.

4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18VAC115-50-50.

5. A graduate-level internship in excess of 600 hours, which was completed in a program that meets the requirements set forth in 18VAC115-50-50, may count for up to an additional 300 hours towards the requirements of a residency.

6. Supervised practicum and internship hours in a COAMFTE-accredited or a CACREP-accredited doctoral program in marriage and family therapy or counseling may be accepted for up to 900 hours of the residency requirement and up to 100 of the required hours of supervision provided the supervisor holds a current, unrestricted license as a marriage and family therapist or professional counselor.

~~6.~~ 7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

~~7.~~ 8. Residents shall not call themselves marriage and family therapists, directly bill for services rendered, or in any way represent themselves as marriage and family therapists. During the residency, ~~they~~ residents may use their names, the initials of their degree, and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address, and telephone number of the resident's supervisor.

~~8.~~ 9. Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

~~9.~~ 10. The residency shall be completed in not less than 21 months or more than four years. Residents who began a residency before August 24, 2016, shall complete the residency by August 24, 2020. An individual who does not complete the residency after four years shall submit evidence to the board showing why the supervised experience should be allowed to continue.

~~10.~~ 11. Residency hours that are approved by the licensing board in another United States jurisdiction and that meet the requirements of this section shall be accepted.

C. Supervisory qualifications. A person who provides supervision for a resident in marriage and family therapy shall:

1. Hold an active, unrestricted license as a marriage and family therapist or professional counselor in the jurisdiction where the supervision is being provided;

2. Document two years post-licensure marriage and family therapy experience; and

3. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-50-96. At least one-half of the 200 hours of supervision shall be rendered by a licensed marriage and family therapist. Supervisors who are clinical psychologists, clinical social workers, or psychiatrists and have been approved to provide supervision may continue to do so until August 24, 2017.

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.

2. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.

3. The supervisor shall provide supervision as defined in 18VAC115-50-10 and shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the residency.

VA.R. Doc. No. R19-17; Filed July 1, 2019, 8:10 p.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-280).**

21VAC5-30. Securities Registration (amending 21VAC5-30-80).

21VAC5-45. Federal Covered Securities (amending 21VAC5-45-20).

21VAC5-80. Investment Advisors (amending 21VAC5-80-10, 21VAC5-80-160, 21VAC5-80-200; adding 21VAC5-80-260).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Public Hearing Information: Public hearing available upon request.

Public Comment Deadline: August 9, 2019.

Agency Contact: Hazel Stewart, Manager, Securities Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9685, FAX (804) 371-9911, or email hazel.stewart@scc.virginia.gov.

Summary:

The proposed amendments to 21VAC5-20 (i) allow broker-dealers to delay or refuse transactions and disbursements of funds from the accounts of vulnerable adults where the financial institution suspects financial exploitation and (ii) update three documents incorporated by reference that pertain to continuing education adopted by federal self-regulatory organizations.

The proposed amendments to 21VAC5-30 (i) update a number of the statements of policy that apply to the registration of securities, including underwriting expenses, unsound financial condition, corporate securities definitions, and loans and other material transactions and (iii) incorporate by reference all statements of policy previously adopted by the State Corporation Commission.

The proposed amendments to 21VAC5-45 remove the date of adoption of Form D, which is the filing form for notices under federal Rule 506 of Regulation D.

The proposed amendments to 21VAC5-80 (i) allow investment advisors to delay or refuse to place orders or disburse funds that may involve or result in financial exploitation of an individual; (ii) prohibit mandatory arbitration clauses in investment advisory contracts; (iii) based on the North American Securities Administrators Association May 18, 2019 Model Rule, add a new section that establishes the minimum policies and procedures to protect client information and privacy, including both physical and cybersecurity measures; (iv) add these information and cybersecurity policy and procedures to the list of required documents to be filed by investment advisor applicants and to the list of required records for investment advisors; (v) conform the regulation to the new model rule and remove the reference to the Securities and Exchange Commission and self-regulatory organizations; and (vi) make it a dishonest or unethical practice for an investment advisor or investment advisor representative to fail to report unauthorized access to a client's information to the commission and client within three business days of discovery.

AT RICHMOND, JUNE 27, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2019-00024

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: http://www.scc.virginia.gov/case.

Proposed Revision to Chapter 20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer. Prohibited Business Conduct

Under certain provisions of Chapter 20, a broker-dealer is required to make securities trades and disburse funds from customer accounts within a prescribed period of time. The proposed amendment to Chapter 20 provides for an exception to these provisions to allow broker-dealers to protect vulnerable customers from potential financial exploitation by permitting the broker-dealer to delay or refuse such transactions and disbursements.

Financial exploitation is the fastest growing category of elder abuse in many states. It is estimated that one in every five older adults have been victimized by financial fraud. These frauds can be perpetrated by strangers, con artists, or even family members and caregivers in whom these adults place their trust. During the 2019 General Assembly, the legislature addressed the growing issue of financial exploitation of vulnerable adults by passing a new subsection L to § 63.2-1606 of the Code for the Protection of Aged or Incapacitated Adults.

This new subsection allows financial institutions to delay transactions and refuse disbursements from the accounts of

vulnerable adults where the financial institution suspects financial exploitation. With this new subsection a broker-dealer's staff can report any information or records to the appropriate authorities if the staff has a good faith belief that the transaction or disbursement may involve financial exploitation of such adults. If the broker-dealer staff follows the requirements of the new subsection, they will be immune from civil or criminal liability, absent gross negligence or willful misconduct.

To effectuate the new statute subsection, the Division of Securities and Retail Franchising ("Division") proposes to add a subsection E to Commission Rule 21 VAC 5-20-280. The new subsection would allow a broker-dealer to delay distributions or refuse transactions if the broker-dealer complies with § 63.2-1606 L of the Code.

In addition, Documents Incorporated by Reference in Chapter 21 VAC 5-20-280 contain revisions to certain rules pertaining to continuing education adopted by federal self-regulatory organizations, including rule revisions for: (1) one revised effective October 1, 2018, by the Financial Industry Regulatory Authority ("FINRA"); (2) one revised effective October 1, 2018. by the New York Stock Exchange (superseded by new FINRA rule); and (3) one revised by the Municipal Securities Rulemaking Board.

Proposed Revision to Chapter 80. Investment Advisors.

A. Dishonest or Unethical Practices.

I. Proposed New Subsection E. Just as with the broker-dealers, the new legislation protecting vulnerable adults from financial exploitation, the Division proposes that new § 63.2-1606 L of the Code apply to the practices of investment advisors. Investment advisors are charged with acting in the best interests of their clients and should do all they can to protect them from financial exploitation. The Division proposes to add a subsection under the Dishonest or Unethical Practices of Chapter 80 to the provide investment advisors the same relief under § 63.2-1606 L of the Code as the Division proposes for broker-dealers.

II. Proposed New Subsection F. Over twenty years ago, investors had a choice of investing with a firm that required arbitration or one that recognized a judicial forum for disputes. Today, almost all financial services contracts offered by broker-dealers includes a mandatory predispute arbitration provision that forces public investors to submit all disputes that they may have to mandatory arbitration. Many investors are not aware of this provision, nor do they have a choice, as all disputes are conducted through a single securities arbitration forum maintained by the securities industry.

In 1996, the United States ("U.S.") Congress ("Congress") passed legislation entitled the National Securities Markets Improvement Act ("NSMIA").[1] NSMIA effectively divided the regulation of investment advisors between the U.S. Securities and Exchange Commission ("SEC") and the states. In general, primary jurisdiction of investment advisors (known as state-covered advisors) with less than $100 million in assets under management fall under state regulation.

However, the state-covered investment advisors are now including boilerplate mandatory arbitration provisions in their clients' contracts. The Division believes, as do many other states, that these "take-it-or-leave-it" clauses in client contracts is inherently unfair to investors. It is particularly unfair when an investment advisor is required by law to act in the best interests of their clients. An investment advisor should not be allowed to force clients to bring any disputes to a forum of the investment advisor's choosing by contract.

Therefore, the Division proposes to add a new subsection F to the Dishonest or Unethical Practices section of Chapter 80 to prohibit mandatory arbitration clauses in investment advisory contracts. There is nothing to prevent the investment advisor and their client from agreeing to arbitrated disputes after negotiation and discussion between each. To require mandatory arbitration in standard investment advisor contracts is contrary to the investment advisors mandate to act in the best interest of their clients.

B. Proposed Investment Advisor Information Security and Privacy Rule.

In recent years, both state and federal regulators have been concerned about data privacy and security in the financial markets. By a vote of its members on May 18, 2019, the North American Securities Administrators Association ("NASAA"),[2] adopted a model rule to address the basic structure for how state-registered investment advisors may design their information security policies and procedures. The new Model Rule requires investment advisors to adopt policies and procedures regarding information security and to deliver its privacy policy annually to clients. The Model Rule was adopted to create uniformity in both state regulation and state-registered investment advisors.

I. Proposed New Section 260. Information Security and Privacy. This new section will be added to the rules for investment advisors to establish the minimum policies and procedures to protect client information and provide information privacy. The current Commission rules require the delivery of the investment advisor's privacy policy on a yearly basis, but the proposed new rule would further refine that requirement. In addition, the model rule adds the new requirements for client information security.

II. Proposed Amendments to Section 10. Application for Registration as an Investment Advisor and Notice Filing as a Federal Covered Advisor. The proposed amendments add the information and cyber security policy and procedures to the list of required documents to be filed by investment advisor applicants. In addition, the proposed amendment requires the

investment advisor to file a copy of their privacy policy, as required for the proposed new rule.

III. Proposed Amendment to Section 160 A. Recordkeeping Requirements for Investment Advisors. Under section 160, investment advisors are required to keep certain records. These records are used by the Division staff to determine compliance with the securities laws and regulations. This amendment will add a new subsection 25 which will add the requirement that investment advisors keep a copy of the policies and procedures required by the proposed new section 260.

IV. Proposed Amendments to Section 200. Dishonest or Unethical Practices

(a) Prohibited conduct regarding privacy of information. Currently, subsection 14 of 200 A requires investment advisors to protect their client's information and makes it a violation for the investment advisor to fail to comply with any applicable privacy provision or standard promulgated by the SEC or any self-regulatory organization approved by the SEC. Now that the NASAA membership has adopted similar requirements in the Model Rule, the Division proposes to amend this section to conform it to the new Model Rule. The proposed amendment removes the reference to the SEC and self-regulatory organizations since the state-covered advisors will be governed by the new section 260, if adopted.

(b) Prohibited conduct regarding an investment advisor's failure to report an unauthorized access of a client's information to the Division and the client. The consequences of unauthorized access to a client's information could be devastating to the client. To address that, the Division proposes a new subsection G to section 200. The proposed new subsection makes it a dishonest or unethical practice for an investment advisor or investment advisor representative to fail to report such unauthorized access to the Division and the client within three business days of discovery. If properly reported, the Division can work with the investment advisor and investment advisor representative to take the appropriate measures to limit the damage and prevent further unauthorized access.

Proposed Revision to Chapter 30. Adoption of NASAA. Statements of Policy.

The Division is a member of NASAA, the association of state securities regulatory agencies. As a part of its mission to provide a uniform approach to the state regulation of securities, the Division, along with the member states, develops and adopts statements of policy that apply to the registration of securities. From time-to-time, NASAA amends these statements of policy to keep them current and address changes in the types of products offered by industry members, as well the changing norms for the standards that will apply to those registrations.

The proposed amendment updates a number of these statements of policy, including (1) underwriting expenses; (2) unsound financial condition; (3) corporate securities definitions; and (4) loans and other material transactions. NASAA vetted the proposed amendments by providing public notice and opportunity to comment. Following the expiration of the comment period, the revisions were adopted in May of 2018 by a vote of the NASAA members.

In addition, Documents Incorporated by Reference in Chapter 21 VAC5-30, will be updated to include all Statements of Policy previously adopted by the Commission in Section 8.

Proposed Revisions to Chapter 45. Offerings conducted pursuant to Rule 506 of Regulation D (17 CFR 230.506): Filing Requirements and issuer-agent exemption.

Many securities offerings today are made through a federal exemption known as Rule 506, which allows an issuer of securities who meets the requirements of the exemption to offer and sell securities in every state without registration. As a part of the adoption of this federal regulation, Congress provided a means for states to monitor these offerings in their state by allowing the states to accept notice filings made under the federal regulation.

To make such notices uniform among the states, the Division adopted this rule to provide for the notice filing through the use of the filing form developed by the SEC, known as Form D. Over the years since Form D was adopted, the SEC has amended the form. In order to make it easier to keep up with the changes to Form D, and to allow the securities industry to use the appropriate form, the Division proposes to drop the date of adoption of Form D from the body of the regulation and instead update its form list (attached hereto to this Order), as necessary.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: http://www.scc.virginia.gov/division/srf. Any comments to the proposed rules must be received by August 9, 2019.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) On or before August 9, 2019, comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond,

Virginia 23218. A request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2019-00024. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) The proposed revisions shall be posted on the Commission's website at http://www.scc.virginia.gov/case and on the Division's website at http://www.scc.virginia.gov/srf. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY HEREOF shall be sent to the Director of the Division of Securities and Retail Franchising who shall forthwith mail a copy of this Order to any interested persons as he may designate.

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[1]Pub.L. No. 104-290, 110 Stat. 3415 (codified through various parts of 15 USC 2006).

[2]NASAA is the membership organization of state securities regulators.

21VAC5-20-280. Prohibited business conduct.

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including~~, but not limited to,~~ seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes~~, but is not limited to,~~ the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, either by (i) hard copy prospectus delivery or (ii) electronic prospectus delivery;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include ~~but not be limited to~~:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order ~~or orders~~ for the purchase or sale of any security with the knowledge that an order ~~or orders~~ of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group

member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction and apprise the customer of the breakpoint opportunities;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes~~, but is not limited to,~~ the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes~~, but is not limited to,~~ an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include~~, but not be limited to,~~ ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. Engage in any conduct that constitutes a dishonest or unethical practice including~~, but not limited to,~~ forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described in this subsection are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this Commonwealth with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, or 32 of this section;

7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or

8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

C. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material,

nonpublic information that would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. a. In addition to the application of the general anti-fraud provisions against anyone in connection with practices similar in nature to the practices discussed in this subdivision 6, the following subdivisions (1) through (6) specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities except those exempt from registration under 21VAC5-40-50:

(1) Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

(2) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, this subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

(3) Conducting sales contests in a particular security.

(4) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(5) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

b. Although subdivisions D 6 a (1) through (6) of this section do not apply to OTC unlisted non-NASDAQ equity securities exempt from registration under 21VAC5-40-50, nothing in this subsection precludes application of the general anti-fraud provisions against anyone in connection with practices similar in nature to the practices discussed in subdivisions D 6 a (1) through (6) of this section.

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including ~~but not limited to~~ the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice, privacy, or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is $5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be $5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible

security must have an exercise price or conversion price of $5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of $4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

E. A broker-dealer or an agent may delay or refuse a transaction or a disbursement of funds that may involve or result in the financial exploitation of an individual pursuant to § 63.2-1606 L of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)

~~Rule 1250 of FINRA By-Laws, Continuing Education Requirements, amended by SR-FINRA-2011-013, eff. October 17, 2011, Financial Industry Regulatory Authority, Inc.~~

~~Rule 345 A of the New York Stock Exchange Rules, Continuing Education for Registered Persons, effective as existed July 1, 1995, New York Stock Exchange.~~

~~Rule G-3(h) of the Municipal Securities Rulemaking Board, Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements, effective as existed July 1, 1995, Municipal Securities Rulemaking Board.~~

Rule 1240 of FINRA By-Laws, Continuing Education Requirements, amended by SR-FINRA-2017-007, eff. October 1, 2018, Financial Industry Regulatory Authority, Inc.

Rule 345 A of the New York Stock Exchange Rules, Continuing Education for Registered Persons, effective as existed July 1, 1995, New York Stock Exchange, superseded by Financial Industry Regulation Authority, Inc. Rule 1200 Series - Rule, 1240, eff. October 1, 2018

Rule G-3(i) of the Municipal Securities Rulemaking Board, Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements, effective as existed July 1, 1995, Municipal Securities Rulemaking Board

Rule 341A of the New York Stock Exchange Market Rules, Continuing Education for Registered Persons, effective as existed May 14, 2012, New York Stock Exchange.

Rule 9.3A of the Chicago Board Options Exchange, Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Board Options Exchange.

Article VI, Rule 11 of the Rules of the Chicago Stock Exchange, Inc., Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Stock Exchange, Inc.

FINRA, Rule 2264, Margin Disclosure Statement, amended by SR-FINRA-2011-065, eff. December 5, 2011.

Article I, Paragraph u of FINRA By-Laws, amended by SR-FINRA-2008-0026, eff. December 15, 2008.

21VAC5-30-80. Adoption of North American Securities Administration Association, Inc. statements of policy.

The commission adopts the following North American Securities Administration Association, Inc. (NASAA) statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.

2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended ~~March 31, 2008~~ May 6, 2018.

3. Real Estate Programs, as amended May 7, 2007.

4. Oil and Gas Programs, as amended May 6, 2012.

5. Cattle-Feeding Programs, as adopted September 17, 1980.

6. Unsound Financial Condition, as amended ~~March 31, 2008~~ May 6, 2018.

7. Real Estate Investment Trusts, as amended May 7, 2007.

8. Church Bonds, as adopted April 29, 1981.

9. Small Company Offering Registrations, as adopted April 28, 1996.

10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.

11. Corporate Securities Definitions, as amended ~~March 31, 2008~~ May 6, 2018.

12. Church Extension Fund Securities, as amended April 18, 2004.

13. Promotional Shares, as amended March 31, 2008.

14. Loans and Other Material Transactions, as amended ~~March 31, 2008~~ May 6, 2018.

15. Impoundment of Proceeds, as amended March 31, 2008.

16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-30)

~~Statement of Policy Regarding Church Extension Fund Securities, adopted April 17, 1994, amended April 18, 2004, North American Securities Administrators Association, Inc.~~

Statement of Policy Regarding Church Extension Fund Securities as amended April 18, 2004, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Options and Warrants, as amended March 31, 2008, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended May 6, 2018, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Unsound Financial Condition, as amended May 6, 2018, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Church Bonds, as adopted April 29, 1981, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Real Estate Programs, as amended May 7, 2007, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Oil and Gas Programs, as amended May 6, 2012, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Church Bonds, as adopted April 29, 1981, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Small Company Offering Registrations, as adopted April 28, 1996, North American Securities Administrators Association, Inc.

NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Corporate Securities Definitions, as amended May 6, 2018, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Promotional Shares, as amended March 31, 2008, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Loans and Other Material Transactions, as amended May 6, 2018, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Impoundment of Proceeds, as amended March 31, 2008, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017, North American Securities Administrators Association, Inc.

Statement of Policy Regarding Cattle-Feeding Programs, as adopted September 17, 1980, North American Securities Administrators Association, Inc.

21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal ~~Regulation~~ regulation D (17 CFR 230.506): ~~Filing~~ filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.

2. A filing fee of $250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC~~, and in effect on September 23, 2013,~~ entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

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 (21VAC5-45)

~~Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)~~

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 5/2017)

Uniform Consent to Service of Process, Form U-2 (rev. 7/2017)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Form NF - Uniform Investment Company Notice Filing (4/1997)

Uniform Notice of Federal Crowdfunding Offering, Form U-CF (undated, filed 9/2017)

Part I
Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration, Renewal, Updates and Amendments, Terminations and Merger or Consolidation

21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of IARD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor unless the applicant submits the following executed forms, fee, and information:

1. Form ADV Parts 1 and 2 submitted to IARD.

2. The statutory fee made payable to FINRA in the amount of $200 submitted to IARD pursuant to § 13.1-505 F of the Act.

3. A copy of the client agreement.

4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.

5. Copies of all advertising materials.

6. Copies of all stationery and business cards.

7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment advisors domiciled outside of Virginia an affidavit stating that the advisor has fewer than six clients in the prior 12-month period.

8. An audited or certified balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment advisor not more than 90 days prior to the date of such filing.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. Evidence of at least one qualified individual with an investment advisor representative registration pending on IARD on behalf of the investment advisor.

11. A copy of the firm's physical security and cybersecurity policies and procedures as required by 21VAC5-80-260 A.

12. A copy of the firm's privacy policy as required by 21VAC5-80-260 B.

13. Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles. Net worth shall not include: prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the IARD.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the federal covered advisor submits the following executed forms, fee, and information:

1. Form ADV Parts 1 and 2.

2. A fee made payable to FINRA in the amount of $200.

21VAC5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal ~~or journals~~, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

(1) Any person in a control relationship to the investment adviser;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business ~~or businesses~~ other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an

unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(1) Any person in a control relationship to the investment advisor;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21VAC5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;

b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and

c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including ~~but not limited to~~ electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision F of 21VAC5-80-170.

22. Copies, with original signatures of the investment advisor's appropriate signatory and the investment advisor representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs U4)

must be retained by the investment advisor (filing on behalf of the investment advisor representative) and must be made available for inspection upon regulatory request.

23. Where the advisor inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within three business days of receipt, the advisor will be considered as not having custody but shall keep the following record to identify all securities or funds held or obtained relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

a. Issuer;

b. Type of security and series;

c. Date of issue;

d. For debt instruments, the denomination, interest rate and maturity date;

e. Certificate number, including alphabetical prefix or suffix;

f. Name in which registered;

g. Date given to the advisor;

h. Date sent to client or sender;

i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

24. If an investment advisor obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under subdivision C 2 of 21VAC5-80-146, the advisor shall keep the following records:

a. A record showing the issuer or current transfer agent's name address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

b. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

25. Any records required pursuant to 21VAC5-80-260.

B. 1. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

e. A copy of any records required to be made and kept under 21VAC5-80-146.

f. A copy of any and all documents executed by the client (including a limited power of attorney) under which the advisor is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the advisor's instruction to the custodian.

g. A copy of each of the client's quarterly account statements as generated and delivered by the qualified custodian. If the advisor also generates a statement that is delivered to the client, the advisor shall also maintain copies of such statements along with the date such statements were sent to the clients.

h. If applicable to the advisor's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

i. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

j. If applicable, evidence of the client's designation of an independent representative.

2. If an investment advisor has custody because it advises a pooled investment vehicle, as defined in 21VAC5-80-146 A in the definition of custody in ~~clause~~ subdivision 1 c, the advisor shall also keep the following records:

a. True, accurate, and current account statements;

b. Where the advisor complies with 21VAC5-80-146 C 4, the records required to be made and kept shall include:

(1) The date ~~or dates~~ of the audit;

(2) A copy of the audited financial statements; and

(3) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

c. Where the advisor complies with 21VAC5-80-146 B 5, the records required to be made and kept shall include:

(1) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(2) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

2. For each security in which any client has a current position, information from which the investment advisor can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 22, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

1. The identity of individuals that will conduct or wind down business on behalf of the investment advisor in the event of death or incapacity of key persons;

2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;

a. Notification shall be provided to the Division of Securities and Retail Franchising via IARD/CRD within 24 hours of the death or incapacity of key persons.

b. Notification shall be given to clients within five business days from the death or incapacity of key persons.

3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the

clients' portfolio to another advisor can be achieved or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs;

4. Means for the credit demands of the investment advisor to be met; and

5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where the books and records will be maintained during such period.

H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

K. For purposes of this section, "principal place of business" and "principal office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without

first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written

communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client~~, or failing to comply with any applicable privacy provision or standard promulgated by the SEC or by a self regulatory organization approved by the SEC~~.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes~~, but is not limited to,~~ the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes~~, but is not limited to,~~ an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes~~, but is not limited to,~~ the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes~~, but is not limited to,~~ an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

E. An investment advisor or investment advisor representative may delay or refuse to place an order or to disburse funds that may involve or result in the financial exploitation of an individual pursuant to § 63.2-1606 L of the Code of Virginia.

F. For purposes of the section, any mandatory arbitration provision in an advisory contract shall be prohibited.

G. The investment advisor and investment advisor representative shall notify the Division of Securities and Retail Franchising, State Corporation Commission and the client of an unauthorized access to records that may expose a client's identity or investments to a third party within three business days of the discovery of the unauthorized access.

21VAC5-80-260. Information security and privacy.

A. Every investment advisor registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures shall be tailored to the investment advisor's business model, taking into

account the size of the firm, type of services provided, and the number of locations of the investment advisor.

1. The physical security and cybersecurity policies and procedures shall:

a. Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

b. Ensure that the investment advisor safeguards confidential client records and information; and

c. Protect any records and information the release of which could result in harm or inconvenience to any client.

2. The physical security and cybersecurity policies and procedures shall cover at least five functions:

a. The organizational understanding to manage information security risk to systems, assets, data, and capabilities;

b. The appropriate safeguards to ensure delivery of critical infrastructure services;

c. The appropriate activities to identify the occurrence of an information security event;

d. The appropriate activities to take action regarding a detected information security event; and

e. The appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

3. The investment advisor shall review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

B. The investment advisor shall deliver upon the investment advisor's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment advisor collects and shares, to the extent permitted by state and federal law, nonpublic personal information. The investment advisor shall promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

VA.R. Doc. No. R19-5907; Filed June 28, 2019, 12:01 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

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

Title of Regulation: **22VAC30-80. Auxiliary Grants Program (amending 22VAC30-80-20).**

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

Effective Date: August 22, 2019.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

Summary:

Pursuant to Chapters 657 and 658 of the 2019 Acts of Assembly, the amendment allows individuals receiving auxiliary grants to select supportive housing without any requirement that such individuals wait until their first or any subsequent annual reassessment to make such selection.

22VAC30-80-20. Assessment.

A. In order to receive payment from the AG for care in an ALF or an AFC home, an individual applying for AG shall have been assessed by a qualified assessor using the UAI in accordance with 22VAC30-110 and determined to need residential or assisted living care or AFC.

B. As a condition of eligibility for the AG, a UAI shall be completed on an individual prior to admission, except for an emergency placement as documented and approved by a Virginia adult protective services worker; at least once annually; and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an ALF ~~or~~, AFC home, or SH setting.

C. The ALF ~~or~~, AFC, or SH provider is prohibited from charging a security deposit or any other form of compensation for providing a room and services to the individual. The

collection or receipt of money, gift, donation or other consideration from or on behalf of an individual for any services provided is prohibited.

D. In order to receive payment from the AG for care in the SH setting, an individual shall be evaluated by a qualified assessor in accordance with § 51.5-160 E of the Code of Virginia. Eligible individuals shall be notified of the SH setting option and the availability of approved SH providers at the time of their first assessment and annual level of care assessment. The individual may select, subject to availability, SH or ALF at any time after the first assessment or any subsequent annual reassessment as long as the individual meets the criteria for residential or assisted living level of care ~~and subject to the availability of the selected housing option~~.

VA.R. Doc. No. R19-5897; Filed June 25, 2019, 10:25 a.m.

EXECUTIVE ORDER NUMBER THIRTY-THREE (2019)

Continuing the Governor's Advisory Commission on Quality Child Care and Education

Importance of the Issue

As Governor of the Commonwealth of Virginia, I am committed to ensuring the prosperity of Virginia. The Commonwealth employs approximately 100,000 employees. Many of these employees play a critically-important role outside of their working hours – that of a parent. These employees work hard to secure a future that is bright and full of opportunity for their children. The Commonwealth should ensure a supportive work environment where employees can work toward the success of their families and the Commonwealth.

Currently, state employees across the Commonwealth struggle with the access to and affordability of quality early care and learning environments for their children. Childhood is a time of development and discovery for parent and child alike. Having a reliable, safe, and nurturing environment where young children can grow and explore individual potential is key to a parent's ability to be a productive member of the workforce. In order to compete to recruit and retain talented young employees, the Commonwealth must support state employees' ability to access and afford early care and learning for their children.

Establishment and Composition of the Commission

Thus, by virtue of the authority vested in me as Governor, under Article V of the Constitution of Virginia and §§ 2.2-134, 2.2-135 and 2.2-2100 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Advisory Commission on Quality Child Care and Education (Commission). Focusing on an area that reflects the highest concentration of the state government's labor force, the Commission will explore the feasibility of providing an evidence-based early care and learning program for young children of state employees working on and around Capitol Square in Richmond.

The Commission's membership shall be appointed by the Governor and co-chaired by the Secretaries of Education and Health and Human Resources or their designees (Co-Chairs). Membership shall also consist of the following:

• A representative from the Office of the First Lady;

• The Secretary of Administration or her designee;

• Two members from the House of Delegates, as recommended by the Speaker of the House;

• One member from the Senate, as recommended by the President pro tempore of the Senate; and

• Experts in early childhood education and development, as appointed by the Governor.

The Governor may appoint other members deemed necessary to carry out the assigned functions of the Commission. The Commission will meet upon the call of the Co-Chairs and will issue a report regarding their findings and recommendations no later than November 1, 2019, and any additional reports and recommendations as necessary or as requested by the Governor.

Staff support for the Commission will be provided by the Secretary of Education, the Secretary of Health and Human Resources, the Office of the Governor, and any other agencies or offices as may be designated by the Governor. An estimated 100 hours of staff time will be required to support the work of the Commission.

Our workforce is only as strong, resilient, and adaptive as we enable it to be. It is my hope that the Commission's findings and recommendations will be shared to promote best practices across the Commonwealth. More particularly, by seeking to nurture the growth of our children, while assisting their parents in managing a work-life balance, I want the Commonwealth to set an example – an example other government and private sector employers will follow.

Effective Date

This Executive Order shall be effective upon signing and shall remain in full force and effect for a year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 25th day of June, 2019.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER THIRTY-FOUR (2019)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Highway Damages from Flooding

Importance of the Issue

On this date, June 11, 2019, I am declaring a state of emergency to exist for the Commonwealth of Virginia due to flooding that affected roadways in the southwest portions of the Commonwealth during February 24, 2019 – March 3, 2019.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this incident constitute a disaster wherein human life and public and private property are 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 Governor and 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 declare that a state of emergency exists, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to respond to the impacts of this severe weather event, alleviate any conditions resulting from the incident, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far 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 hereby order the following protective and restoration measures:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP) along with other appropriate state agency 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. Implementation by public agencies of their emergency assignments under my supervision and control 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) Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

D. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth 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, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective February 24, 2019, and shall remain in full force and effect until July 11, 2019, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type 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 27th day of June 2019.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER THIRTY-FIVE (2019)

Advancing Equity for Small-, Women-, Minority-, and Service Disabled Veteran-Owned Businesses in State Contracting

Importance of the Issue

State contracting provides the catalyst for economic opportunity and expands access for many businesses. As part of this process, it is imperative for Virginia to maximize the participation of small businesses, including those owned by women, minorities, and service disabled veterans, in state contractual work. For Virginia to remain competitive and continue to advance its small business goals, significant work must be done for a more transparent, equitable, and inclusive process.

Furthermore, Virginia must work to maximize participation of a diverse group of vendors in state contractual work. Virginia has a long history of racial inequality and disenfranchisement of minority communities. We have made some progress in the last six decades since the civil rights movement began, but not enough. Additionally, in June we celebrate the centennial anniversary of Congress passing the women's right to vote. One hundred years later, however, women are more likely to live in poverty, economic gender inequality continues, and women are underrepresented in elected office, business, and the workforce.

The Commonwealth conducted procurement disparity studies in 2002 and 2009. The 2002 study resulted in a 2004 report, which found that from 1998 to 2002, only 1.27 percent of total state contracts were awarded to women-owned and minority-owned businesses. The 2009 study which was published in a 2011 report found that for 2007, 2.82 percent of total state contracts were awarded to women-owned and minority-owned businesses. While this showed movement, the update found continued disparity between the availability and utilization of women-owned and minority-owned businesses in all business categories of prime contractors including (i) construction, (ii) architecture and engineering, (iii) professional services, (iv) nonprofessional services, and (v) goods and supplies. As part of the effort under this Executive Order, a new disparity study must be conducted.

Directive

To provide for a more equitable and inclusive process, I am directing the following executive branch agencies and institutions of higher education that have statutory authority over procurement, in conjunction with the Department of Small Business and Supplier Diversity (DSBSD), as provided in § 2.2-1605(A)(6) of the Code of Virginia, to implement the requirements herein within their respective areas of procurement authority: Department of General Services (DGS), Virginia Information Technologies Agency (VITA), Virginia Department of Transportation (VDOT), those institutions of higher education that have autonomy in procurement granted under the Restructured Higher Education Financial and Administrative Operations Act (Code of Virginia § 23.1-1000, et seq.), and all other executive branch agencies that have statutory authority for procurement.

For purposes of this Executive Order: 1) "Executive Branch Agency" shall mean all entities in the executive branch, including agencies, authorities, commissions, departments, and all institutions of higher education; 2) "small businesses" shall include, but not be limited to, small, any subcategory of small, small women-owned, small minority-owned, or small service disabled veteran-owned businesses (SWaM).

Initiatives

With a continuing rational basis for small business enhancement, and pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, § 2.2-4310(C) of the Code of Virginia, and applicable Memoranda of Understanding and Management Agreements entered into pursuant to Code of Virginia § 23.1-1000, et seq., I hereby direct my Cabinet Secretaries and all Executive Branch Agencies as follows:

1. That the Commonwealth exceed a target goal of 42 percent of discretionary spending for Executive Branch Agencies with small businesses certified by DSBSD, which would be the highest percentage of expenditures since FY 2004. This percentage applies to discretionary spending in categories from which the Commonwealth derives procurement orders, prime contracts, and subcontracts. DSBSD, in consultation with Executive Branch Agencies with procurement responsibilities, shall advance this procurement goal. Further, for all new capital outlay construction solicitations issued, Executive Branch Agencies shall include a requirement for a target goal of 50 percent subcontracting to small businesses.

Each Executive Branch Agency shall submit annual agency SWaM plans to DSBSD on September 1, to include promotion and utilization of: small, any subcategory of small, small women-owned, small minority-owned, small service disabled veteran-owned, and employment service organizations. Executive Branch Agencies shall review and update their goals, policies, and procedures to conform with this Executive Order and the implementing regulations adopted pursuant to § 2.2-1605(A)(6) of the Code of Virginia and thereby ensure that a greater percentage of purchases is made from certified small businesses in goods, services, and construction categories from which the Commonwealth makes its purchases.

2. Continue the subcategory of small businesses eligible for micro business designation, which includes those certified small businesses that have no more than 25 employees and no more than $3 million in average annual revenue over the three-year period prior to certification.

3. Conduct an updated disparity study on women- and minority-owned business participation in the Commonwealth's procurement transactions. The 2004 and 2011 disparity study reports provided an analysis that documented a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, indicating a need for a narrowly-tailored race and gender conscious program. However, these studies need to be updated to ensure that any policy derived there from will withstand legal scrutiny. As required in § 2.2-4310 of the Code of Virginia, I hereby direct the DSBSD to contract with a qualified, independent third party to conduct a disparity assessment on the status of women-owned and minority-owned business participation in the Commonwealth's procurement transactions. This study shall: (i) determine if disparity exists and (ii) if so, determine why the disparity exists and what solutions or remedies could be implemented, specifically evaluating narrowly-tailored race and gender conscious programs. I further direct all Executive Branch Agencies to support and provide requested data to DSBSD to facilitate this comprehensive study.

4. Executive Branch Agencies shall formulate policies and procedures for a set-aside program, which shall, at a minimum, require that purchases up to $100,000 for goods, nonprofessional services, and construction, and up to $80,000 for professional services, be set aside for award to DSBSD-certified small businesses when the price quoted is fair and reasonable and does not exceed 5 percent of the lowest responsive and responsible noncertified bidder. Purchases up to $10,000 shall be set aside for award to micro businesses when the price quoted is fair and reasonable and does not exceed 5 percent of the lowest responsive and responsible noncertified bidder.

5. Executive branch agencies shall formulate policies and procedures to require a small business subcontracting plan in all procurements over $100,000. Each bidder/offeror shall be required to submit their bid/proposal and their small business sub-contracting plan using DGS's central electronic procurement system, except for VDOT contracts for highway construction and design projects. Such plans shall identify all planned utilization of (i) small businesses, (ii) subcategory of small businesses, (iii) small women-owned businesses, (iv)

small minority-owned businesses, and (v) small service disabled veteran-owned businesses.

6. Each prime contractor shall be required to report compliance with its small subcontracting plans using DGS's central electronic procurement system, except for VDOT contracts for highway construction and design projects. Before final payment is made, the purchasing agency shall confirm that the prime contractor certified compliance with the contract's small business subcontracting plan. If there are any variances between the prime contractor's required small business subcontracting plan and the actual participation, the prime contractor shall provide a written explanation to the purchasing agency. The written explanation shall be kept with the contract file and made available upon request.

Contracts and renewals shall include a provision allowing final payment to be withheld until the prime contractor complies with its small business subcontracting plan. Prior to entering into a new contract or renewing a contract with a prime contractor, a purchasing agency shall review a contractor's record of compliance with small business subcontracting plan requirements. A prime contractor's failure to meet satisfactorily designated small business subcontracting procurement plan requirements shall be considered in the prospective award or renewal of any future contracts with the prime contractor.

7. To ensure that all SWaM businesses have one central site to provide transparency to all Virginia opportunities and contracts, Executive Branch Agencies shall utilize DGS's central electronic procurement system to post current and future procurement and subcontracting opportunities. Executive Branch Agencies shall use DGS's central electronic procurement system beginning at the point of requisitioning for all procurement actions, including but not limited to technology, transportation, professional services, and construction. This data will also be instrumental in the facilitation of the disparity study.

8. Notwithstanding paragraphs 5, 6, and 7, institutions of higher education with statutory authority for procurement shall provide such data or plans as required using DGS's central electronic procurement system or by integration or interface with the DGS system.

9. Institutions of higher education shall work with the Secretary of Administration, Secretary of Commerce and Trade, and the Secretary of Education to define best practices and assist the Commonwealth in its work to advance equity for small-, women-, minority-, and service disabled veteran-owned businesses in state contracting.

Collaborative Agency Efforts

The above initiatives will spur creativity, promote economic development, and encourage procurement participation by small businesses, including those owned by women, minorities, and service disabled veterans. In support of the initiatives set out above, I further direct the following actions to be taken by Cabinet Secretaries and Executive Branch Agencies:

1. DSBSD, in conjunction with DGS, VITA, VDOT, and institutions of higher education with procurement autonomy, shall implement initiatives to enhance the development of small businesses in Virginia. Such initiatives shall include, but not be limited to:

- Information on access to capital, including contract financing, bonding support, and other opportunities for economic development as well as management and technical assistance programs;
- Partnerships and outreach with local business groups, chambers of commerce, and other organizations to develop a diverse vendor base; and
- Statewide mentor protégé programs.

2. DSBSD, in collaboration with DGS and institutions of higher education with procurement autonomy, shall conduct a vendor outreach training program throughout the Commonwealth. Such training shall include instructions on how to obtain certification from DSBSD as well as registration with and research through the DGS's central electronic procurement system. The training should encourage SWaM participation and help businesses overcome identified barriers.

3. Executive Branch Agencies shall review the efficacy of implementing other small business enhancement tools and processes, such as:

- Unbundling contracts;
- Relaxing the requirement for mandatory attendance at pre-bid meetings;
- Expanding time to respond to small purchase solicitations; and
- Streamlining the paperwork required of small businesses.

4. All Executive Branch Agencies shall include updated SWaM regulations and/or guidelines to reflect the requirements of this Executive Order in purchasing manuals, regulations, and guidelines.

5. Executive Branch Agencies shall actively recruit small businesses to seek certification from DSBSD, to register on DGS's central procurement system, and to compete for state procurement opportunities.

6. VDOT, for road and bridge construction, and DGS, for construction, shall develop guidelines to be used by Executive Branch Agencies in making construction mobilization payments to businesses when reasonable and necessary to facilitate contract initiation.

7. The Virginia Economic Development Partnership (VEDP) shall send DSBSD its regular report to the Secretary of Commerce and Trade on new economic development announcements of business activity in the Commonwealth, including those announcements in which VEDP provided an administered economic incentive. Such report will enable DSBSD to ascertain in a timely manner what opportunities the activity may bring for Virginia's SWaM businesses.

8. Each Executive Branch Agencies shall designate a SWaM equity champion to ensure equity in the solicitation of procurement proposals/bids and awarding of contracts.

9. DSBSD, in collaboration from DGS, VITA, and institutions of higher education with procurement autonomy, shall develop equity in procurement trainings for agency heads, presidents of institutions of higher education, and senior managers with procurement oversight. Such training shall be completed annually.

10. DSBSD and DGS may coordinate with the Virginia Association of Counties, the Virginia Municipal League, and the Virginia Association of Governmental Purchasing to identify opportunities for state and local government entities to collaborate in order to maximize procurement equity for small businesses.

Reporting Requirements

1. Cabinet Secretaries shall monitor their agencies' and higher education institution's spending with all certified small businesses and meet with the Governor, or his designee, quarterly to discuss the agencies' performance. DSBSD shall develop a standard reporting format for such purposes. The report shall include information on purchases made from all certified small businesses. In addition, the Secretary of Commerce and Trade will assess overall state performance and report quarterly to the Governor.

Each Cabinet Secretary shall evaluate the performance of their agencies and institutions of higher education in implementing these directives. DSBSD, in cooperation with each Cabinet Secretary, shall provide quarterly reports to the Secretary of Commerce and Trade regarding the Commonwealth's progress in enhancing opportunities for SWaM businesses. The reports shall delineate the Commonwealth's spending in detail by SWaM category and agency.

2. Executive Branch Agencies with procurement responsibilities shall review practices, procedures, and proposal evaluation criteria to identify and remove barriers or limitations to SWaM participation. A section on "barriers or limitations" shall be included in annual Executive Branch Agency SWaM plans. SWaM plans shall be developed and submitted to DSBSD by September 1. DSBSD shall submit the annual SWaM Plan Compliance Report to the Secretary of Commerce and Trade on October 1 of each fiscal year.

Effective Date of this Order

This Executive Order rescinds and replaces Executive Order 20 (2014), issued by Governor Terence R. McAuliffe and shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of July 2019.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

BOARD OF ACCOUNTANCY

Title of Document: Administrative Policy and Procedure.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Elizabeth Marcello, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, or email elizabeth.marcello@boa.virginia.gov.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents:

Adult Protective Services Division Manual, August 2019.

Auxiliary Grant Policy Manual Chapters B, C, I and K (June 2019).

Auxiliary Grant in Supportive Housing: Provider Operating Manual.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

Titles of Documents:

Title V Air Permits Guidance Manual.

Title V Air Permits Guidance Manual, Chapter 1 - Title V Applicability & Voluntary Limits.

Title V Air Permits Guidance Manual, Chapter 5 - Statement of Basis.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Amber Foster, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4319, or email amber.foster@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Document: Review Process for UECA Environmental Covenants.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Michelle Payne, Office of Remediation Programs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4014, or email michelle.payne@deq.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Child and Family Services Manual Chapter C - Child Protective Services.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Nicole Shipp, Department of Social Services, 801 East Main Street, Richmond, VA 23229, telephone (804) 726-7574, or email nicole.shipp@dss.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Child and Family Services Manual Chapter F - Adoption.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Traci B. Jones, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7499, or email traci.jones@dss.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Virginia EBT Policy and Procedures 2019.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Celestine Jackson, Human Services Consultant, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7376, or email celestine.jackson@dss.virginia.gov.

BOARD OF SOCIAL WORK

Title of Document: Virginia Board of Social Work Bylaws.

Public Comment Deadline: August 21, 2019.

Effective Date: August 22, 2019.

Agency Contact: Elaine J. Yeatts, Agency 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Dogwood Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Page County

Dogwood Solar 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 Page County. The proposed project will be located along Dam Acres Road in Stanley. The project will have a maximum generating capacity of 20 megawatts alternating current. The solar panels will be sited across multiple parcels of land totaling approximately 340 acres. Proposed improvements include solar arrays and related infrastructure, access roads, fencing, possible storm water management best management practices, and temporary erosion controls. The site is currently agricultural land and is zoned Agricultural (A-1 and AC).

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, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Rivanna Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Albemarle County

Rivanna Solar LLC (Rivanna Solar), an affiliate of Apex Clean Energy Holdings 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 Albemarle County. Rivanna Solar is proposed as an approximately 12.5-megawatt alternating current solar photovoltaic generating facility consisting of approximately 38,000 solar panels. The proposed project will be located on approximately 150 acres of privately owned land in southeastern Albemarle County, east of Buck Island Road and south of Thomas Jefferson Parkway. Approximate coordinates are 37°58'2.50"N, 78°24'1.56"W.

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, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

SolUnesco LLC Notice of Withdrawal for Small Renewable Energy Project (Solar) Permit by Rule - Albemarle County

SolUnesco LLC has retracted its notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Albemarle County. The notice of intent was posted to the Virginia Regulatory Town Hall on October 20, 2016, and published in the Virginia Register of Regulations on November 14, 2016. For further reference, this is a 14-megawatt direct current, 11-megawatt alternating current solar farm located at GPS coordinates 37.9678N, -78.4046E on Thomas Jefferson Parkway and Buck Island Road. The new owner for this project, Apex Clean Energy, has submitted a new notice of intent for this project to reflect an updated ownership LLC and project name (Rivanna Solar LLC).

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, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft EPSDT Supplement B and CCC Plus Waiver Chapter V Provider Manuals Available for Stakeholder Input

Public comment period: June 28, 2019, to July 28, 2019.

Changes to both the Early Periodic Screening, Diagnosis and Treatment Supplement B and the CCC Plus Waiver Chapter V provider manuals are now posted on the Department of Medical Assistance Services website for public comment through July 28, 2019.

This update instructs providers how to bill for electronic visit verification services under fee-for-service billing.

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.

VIRGINIA WASTE MANAGEMENT BOARD

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 Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC20-85, Coal Combustion Byproduct Regulations**. 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 public comment period begins July 22, 2019, and ends August 12, 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 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.

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.

STATE WATER CONTROL BOARD

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 Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC25-220, Surface Water Management Area Regulation**. 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 public comment period begins July 22, 2019, and ends August 12, 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 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.

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.

Proposed Consent Order for Merck Sharp & Dohme Corp.

An enforcement action has been proposed for Merck Sharp & Dohme Corp. for violations at the Merck Sharp & Dohme Corp. Elkton Plant. The State Water Control Board proposes to issue a consent order with penalty to Merck Sharp & Dohme Corp. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from July 22, 2019, to August 21, 2019.

Proposed Consent Order for Shore Health Services Inc.

An enforcement action has been proposed for Shore Health Services Inc. for violations of State Water Control Law at the Riverside Shore Memorial Hospital facility in Nassawadox, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from July 22, 2019, to August 21, 2019.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the

regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.**

Publication: 35:19 VA.R. 2240-2260, May 13, 2019

Correction to Final Regulation:

Page 2249, second column, 9VAC25-190-70 Part I B 14 a, seventh line, after "H" strike "4" and replace "d 3" with "3 d"

VA.R. Doc. No. R18-5446; Filed July 11, 2019, 11:19 a.m.