VIRGINIA REGISTER OF REGULATIONS

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

Members of the Virginia Code Commission: **John S. Edwards,** Chair**; Marcus B. Simon,** Vice Chair**; Ward L. Armstrong; Nicole Cheuk; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Don L. Scott, Jr.; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

October 2022 through October 2023

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 **(Monday)**	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 13, 2022 **(Tuesday)**	January 2, 2023
39:11	December 27, 2022 **(Tuesday)**	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending **9VAC5-140, Regulation for Emissions Trading**. The purpose of the proposed action is to begin the process of developing a regulation to repeal the regulation implementing the Regional Greenhouse Gas Initiative (RGGI) participation pursuant to Executive Order 9 (2022) (EO-9) "Protecting Ratepayers from the Rising Cost of Living Due to the Regional Greenhouse Gas Initiative." EO-9 requires the Department of Environmental Quality (DEQ) reevaluate Virginia's participation in the RGGI and begin a regulatory processes to end it. Specifically, the order requires that DEQ develop a rulemaking action to repeal the regulation implementing participation in RGGI (i.e., Part VII of 9VAC5-140) and take all necessary steps so that any proposed regulation to the State Air Pollution Control Board can be immediately presented for consideration for approval for public comment in accordance with board authority pursuant to § 10.1-1308 of the Code of Virginia.

The mandate and necessity for this regulatory change are described in EO-9 as follows:

> Virginia's participation in the Regional Greenhouse Gas Initiative (RGGI) risks contributing to the increased cost of electricity for our citizens. Virginia's utilities have sold over $227 million in allowances in 2021 during the RGGI auctions, doubling the initial estimates. Those utilities are allowed to pass on the costs of purchasing allowances to their ratepayers. Under the initial bill "RGGI rider" created for Dominion Energy customers, typical residential customer bills were increased by $2.39 a month and the typical industrial customer bill by was raised by $1,554 per month. In a filing before the State Corporation Commission, Dominion Energy stated that RGGI will cost ratepayers between $1 billion and $1.2 billion over the next four years.
>
> Simply stated, the benefits of RGGI have not materialized, while the costs have skyrocketed. Re-evaluation of the Initiative represents a meaningful step toward alleviating this financial burden on the Commonwealth's businesses and households. Regulations must be evaluated in view of the costs and benefits to all Virginians.

According to the U.S. Department of Energy (DOE), Virginians pay on average $2,323 per year in nontransportation energy costs, which is higher than the national average of $1,850. The index for electricity rose by more than 13% over the last 12 months, the largest single-year increase since 2006, while the natural gas index rose by 38.4%, the biggest 12-month jump since October 2005. In July 2022, electricity prices rose 1.7%, and natural gas prices rose 8.2%. Considering that Virginia obtains most of its electricity from natural gas, rising natural gas prices have forced electricity prices even higher. Dominion Energy has filed for 16 rate adjustments over a 12-month period ending July 1, 2022. In May 2022, Dominion filed for a rate increase with the State Corporation Commission (SCC) that could result in monthly rate increases of 12% to 20% due to rising fuel costs. The cumulative impact of those adjustments results in an increase of $0.022423/kilowatt hour or 18% in Dominion's rates that it charges for delivered electricity. This assumes final SCC approval of the fuel rate adjustment and its agreement to Dominion's request to amortize the fuel adjustment over three years.

According to the most recent data supplied by the Federal Energy Information Administration (2020), the average annual household consumption of electricity in Virginia is 13,140 kilowatt hours. Historically, the average energy consumption in Virginia has increased by 1.38% per year. The cumulative impact of these described adjustments would increase the average household's bill by approximately $294 per year, but this amount will increase as consumption continues to increase. The current energy framework in Virginia allows energy providers to also charge ratepayers for the transition and expansion of clean energy infrastructure, resulting in no incentive for utilities to reduce emissions or compliance costs. For example, the SCC recently approved an application by Dominion for cost recovery associated with its proposed Coastal Virginia Offshore Wind Project. The project consists of 176 wind turbines, each designed to generate 14.7 megawatts, to be located about 27 miles off the coast of Virginia Beach. The project is expected to have a capital cost of $9.8 billion and will likely be the largest capital investment and single largest project in Dominion's history. The SCC approved a revenue requirement of $78.702 million for the rate year of September 1, 2022, to August 31, 2023, to be recovered through a new rate adjustment clause. Over the projected 35-year lifetime of the project for a residential customer using 1,000 kilowatt-hours of electricity per month, the rate adjustment is projected to result in an average monthly bill increase of $4.72 and a peak monthly bill increase of $14.22 in 2027. This is another instance of upward pressure on utility costs with a direct impact on consumers. This is something that is making Virginia less competitive with other states in ability to reduce energy costs, make the energy economy competitive, and bring new investment into the state.

These energy cost increases are coming at a time that Virginians can least afford them. As of June 2022, inflation has risen 9.1% on an annual basis, the highest increase in over 40 years. According to the Bureau of Labor Statistics, consumer energy prices are up 41.6% in the last year. The rate of inflation for energy is more than four times the inflation rate of all food items and the Consumer Price Index. Real wage growth has not kept pace with this rapid inflation, and real wages decreased by 1.0% in June 2022; over the last year wages have decreased 3.6%. This hurts Virginia families, and those families and

individuals who can least afford increases in energy costs. According to the American Council for an Energy Efficient Economy, "Black households spend 43% more of their income on energy costs, Hispanic households spend 20% more, and Native American households spend 45% more. Low-income households (those with incomes 200% of the federal poverty level) spend three times more of their income on energy costs than non-low income households."

EO-9 directs DEQ to provide the Governor with a full report reevaluating the costs and benefits of participation in RGGI in view of all available data. As detailed, it is clear that participation in RGGI operates as a direct tax on households and businesses. Since the consumers are utility-captive ratepayers who do not have the opportunity to switch electric providers, they are unable to avoid the pass-through of RGGI costs whether through a direct rate adjustment clause or incorporation into the base rate of an electricity bill. Emission allowance prices have increased over 146% since Virginia joined RGGI in 2020, and these substantial increases are expected to continue, which in turn will result in increased rates to ratepayers.

The original analysis and consignment auction approach for RGGI was designed on the basis that proceeds would be returned to the consumers to offset the cost of compliance and have little impact on electricity prices. However, since this is not how the program was implemented in Virginia, the costs of compliance with RGGI have materialized in higher electricity rates for Virginians. The impact of RGGI and the other factors discussed on the current state of electricity costs shows a substantial burden placed on Virginians that must be addressed.

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

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; Clean Air Act (42 USC § 7401 et seq.); 40 CFR Part 51.

Public Comment Deadline: October 26, 2022.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

VA.R. Doc. No. R23-7361; Filed September 7, 2022, 7:04 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**. The purpose of the proposed action is to update the regulation following periodic review. The intended substantive amendments and new provisions to the regulation will include updating definitions and requirements for (i) water treatment and chemical safety in storage and handling; (ii) water recirculation and entrapment prevention; (iii) signage and safety equipment; (iv) facility maintenance, including decks, rails, electrical work, and fencing; (v) management and staffing; (vi) water, sewer, and solid waste disposal; (vii) post-construction operational plan reviews, inspections, and general enforcement; and (viii) additional amendments deemed necessary.

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

Statutory Authority: §§ 35.1-11 and 35.1-13 of the Code of Virginia.

Public Comment Deadline: October 26, 2022.

Agency Contact: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (805) 584-6340, or email briana.bill@vdh.virginia.gov.

VA.R. Doc. No. R22-7147; Filed August 26, 2022, 9:56 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Results**. The purpose of the proposed action is to update the regulation following a periodic review. Intended amendments will (i) remove outdated information; (ii) update text to reflect best practices and the latest science from industry, academia, public health experts, and other stakeholders; (iii) clarify regulatory and enforcement standards; and (iv) include changes deemed necessary in response to public comment or input from subject matter experts.

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

Statutory Authority: §§ 32.1-12 and 32.1-248.1 of the Code of Virginia.

Public Comment Deadline: October 26, 2022.

Agency Contact: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (805) 584-6340, or email briana.bill@vdh.virginia.gov.

VA.R. Doc. No. R22-7148; Filed August 26, 2022, 9:56 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending **12VAC30-110, Eligibility and Appeals; 12VAC30-120, Waivered Services;** and **12VAC30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to bring regulations regarding client appeals into compliance with Item 317 GG 2 of the 2021 Appropriations Act. The amendments being considered clarify (i) the burden of proof in client appeals; (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings.

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

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

Public Comment Deadline: October 26, 2022.

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

VA.R. Doc. No. R23-6871; Filed September 6, 2022, 8:16 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations,** and **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to remove the cap on exam fees and allow exam vendor contracts to be negotiated without a cap to expand services, particularly to include multiple language services and remote proctoring. The board currently adheres to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Other Department of Professional and Occupational Regulation boards have amended their regulations to include this provision of offering examinations in languages other than English. Offering Board for Contractors examinations in languages other than English and using remote proctoring support workforce development and promote a positive business environment and license mobility. The board also intends as part of this action to remove an obsolete section that lists the board as the administrator of examinations.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: October 26, 2022.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-7338; Filed September 7, 2022, 4:36 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to update the regulation following a periodic review. The review identified several areas in need of amending, including clarifying terminology and requirements for licensed clinical social workers (LCSW), licensed master's social workers, and licensed baccalaureate social workers; reviewing the definition of ancillary services for comprehensiveness and clarity; including diagnosing third parties and providing children sex education without express parental consent as actions that constitute unprofessional conduct; removing redundant provisions, terms, and definitions; clarifying responsibilities of supervisors of LCSW candidates; and adding organizations for approval of continuing education.

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

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

Public Comment Deadline: October 26, 2022.

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

VA.R. Doc. No. R22-7250; Filed August 25, 2022, 12:02 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-705, Child Protective Services**. The purpose of the proposed action is to

remove the notary requirement for the consent an individual signs requesting a search of the Central Registry System to determine an individual has no founded case of child abuse or neglect. The Central Virginia Child Abuse and Neglect Central Registry Unit performs searches at the request of individuals who seek to provide services or care to children through employment, foster care, adoption, or volunteer opportunities. The purpose of the amendments is to expedite the search process and make it less burdensome for individuals who wish to provide services or care to children.

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

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

Public Comment Deadline: October 26, 2022.

Agency Contact: Kristen Eckstein, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7897, or email kristen.eckstein@dss.virginia.gov.

VA.R. Doc. No. R23-7198; Filed September 2, 2022, 8:18 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

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

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

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

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

Effective Dates: September 8, 2022, through March 7, 2024.

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

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

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

12VAC30-110-10. Definitions.

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

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

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

"Agency" means:

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

2. The department itself.

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

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

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

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Appeals Division.

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

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

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

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

12VAC30-110-185. Appeal summary.

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

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

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

3. The local office responsible for the appellant's case;

4. A summary of the facts surrounding and the grounds supporting the adverse action;

5. Citations to the statutes, regulations, and specific provisions of the department's Medicaid manual or other policy that support the agency's action; and

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

B. The summary shall be sent to the appellant and representative, if applicable, at least five days before the hearing date.

12VAC30-110-220. Evidentiary hearings.

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

B. De novo hearing. All hearings shall be considered "de novo," meaning that the department's hearing officer will consider all relevant evidence submitted during the appeal in order to make a determination on the issues on appeal, even if the evidence was not previously received by the agency. The hearing officer shall consider testimony and evidence that explains, supports, or is probative to the issues on appeal.

C. Burden of proof. The burden of proof shall be assigned to the party who is attempting to change the status quo. If an individual is seeking initial Medicaid eligibility, an increase in the Medicaid eligibility level, or the initial approval of a medical service, the individual has the burden of proof. Conversely, when an already-eligible individual is facing a proposed termination or reduction in Medicaid eligibility or medical services, the burden of proof shall be assigned to the entity that has proposed the change to an individual's coverage. To prevail in the appeal, the party with the assigned burden of proof shall establish its position to the satisfaction of the hearing officer by a preponderance of the evidence.

D. Submission of evidence. The appellant's appeal request should include all documents the appellant would like considered during the appeal. The appellant can also submit additional documents leading up to and during the appeal hearing. The hearing officer has the discretion to reschedule or delay a hearing in order to allow the hearing officer and agency time to review documents submitted close to or at the scheduled hearing. Post-hearing supplementation of the record is addressed in 12VAC30-110-360. Failure to submit information with the appeal so that it can be moved forward will add delay to the appeal decision due date per 42 CFR 431.244.

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

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

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

2. Findings of fact that identify supporting evidence;

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

4. Conclusions and reasoning;

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

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

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

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

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

A. All state fair hearings shall be conducted de novo per 12VAC30-110-220.

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

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

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

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

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

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

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

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

~~F.~~ G. State fair hearings shall be conducted in an informal, nonadversarial manner. The appellant ~~or~~ and the appellant's authorized representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

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

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

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

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

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

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

~~I.~~ J. After conducting the state fair hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision ~~that sustains or reverses, in whole or in part, the MCO's adverse benefit determination or remands~~

~~the case to the MCO for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions~~. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R23-6871; Filed September 6, 2022, 8:16 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-45, 18VAC140-20-110, 18VAC140-20-150).**

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

Effective Date: October 26, 2022.

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

Summary:

The amendments (i) eliminate all requirements for either supervised experience or active practice in another jurisdiction for licensure by endorsement for a licensed bachelor social worker, licensed master social worker, or licensed clinical social worker; (ii) eliminate requirements for a person whose license has been lapsed for 10 or more years to provide evidence of either active practice in another jurisdiction or in an exempt setting or supervised practice of no less than 360 hours in a 12-month period in order to reinstate or reactive a license; and (iii) specify in the standards of practice that persons licensed by the board shall not engage in physical contact with a client when there is a likelihood of psychological harm to the client and shall not sexually harass a client.

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

18VAC140-20-45. Requirements for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.

2. Documentation of active social work licensure in good standing obtained by standards required for licensure in another jurisdiction as verified by the out-of-state licensing agency. Licensure in the other jurisdiction shall be of a comparable type as the licensure that the applicant is seeking in Virginia.

3. Verification of a passing score on a board-approved national exam at the level for which the applicant is seeking licensure in Virginia.

4. Documentation of any other health or mental health licensure or certification, if applicable.

5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

6. ~~Verification of:~~

~~a. Active practice at the level for which the applicant is seeking licensure in another United States jurisdiction for 24 out of the past 60 months;~~

~~b. Active practice in an exempt setting at the level for which the applicant is seeking licensure for 24 out of the past 60 months; or~~

~~c. Evidence of supervised experience requirements substantially equivalent to those outlined in 18VAC140-20-50 A 2 and A 3.~~

~~7.~~ Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

B. If an applicant for licensure by endorsement has not passed a board-approved national examination at the level for which the applicant is seeking licensure in Virginia, the board may approve the applicant to sit for such examination.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. An LBSW, LMSW, or clinical social worker whose license has expired may renew that license within one year after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.

2. Paying the penalty for late renewal and the renewal fee as prescribed in 18VAC140-20-30.

B. An LBSW, LMSW, or clinical social worker who fails to renew the license after one year and who wishes to resume practice shall apply for reinstatement and pay the reinstatement fee, which shall consist of the application processing fee and the penalty fee for late renewal, as set forth in 18VAC140-20-30. An applicant for reinstatement shall also provide:

1. Documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years;

2. Documentation of any other health or mental health licensure or certification held in another United States jurisdiction, if applicable; and

3. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

C. ~~In addition to requirements set forth in subsection B of this section, an applicant for reinstatement whose license has been lapsed for 10 or more years shall also provide evidence of competency to practice by documenting:~~

~~1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;~~

~~2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or~~

~~3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reinstatement of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.~~

~~D.~~ An LBSW, LMSW, or clinical social worker wishing to reactivate an inactive license shall submit the difference between the renewal fee for active licensure and the fee for inactive licensure renewal and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. ~~An applicant for reactivation who has been inactive for 10 or more years shall also provide evidence of competency to practice by documenting:~~

~~1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;~~

~~2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or~~

~~3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reactivation of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.~~

18VAC140-20-150. Professional conduct.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone, or electronically, these standards shall apply to the practice of social work.

B. Persons licensed as LBSWs, LMSWs, and clinical social workers shall:

1. Be able to justify all services rendered to or on behalf of clients as necessary for diagnostic or therapeutic purposes.

2. Provide for continuation of care when services must be interrupted or terminated.

3. Practice only within the competency areas for which they are qualified by education and experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of social work.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Ensure that clients are aware of fees and billing arrangements before rendering services.

7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that clients have provided informed written consent to treatment.

8. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

9. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.

10. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

13. Not engage in conversion therapy with any person younger than 18 years of age.

[14. Not engage in physical contact with a client when there is a likelihood of psychological harm to the client. Social workers who engage in physical contact are responsible for setting clear and culturally sensitive boundaries.

15. Not sexually harass clients. Sexual harassment includes sexual advances; sexual solicitation; requests for sexual favors; and other verbal, written, electronic, or physical contact of a sexual nature.]

C. In regard to client records, persons licensed by the board shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that substantiates diagnosis and treatment plans. Each record shall include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative or as mandated by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

5. Maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or ~~his~~ the client's legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Not engage in a dual relationship with a client or a supervisee that could impair professional judgment or increase the risk of exploitation or harm to the client or supervisee. (Examples of such a relationship include familial, social, financial, business, bartering, or a close personal relationship with a client or supervisee.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of romantic relationship or sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a romantic or sexual relationship. Social workers shall not engage in romantic relationship or sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.

3. Not engage in any romantic or sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the social worker in ~~his~~ the social worker's professional capacity.

[~~6. Not engage in physical contact with a client when there is a likelihood of psychological harm to the client. Social workers who engage in physical contact are responsible for setting clear and culturally sensitive boundaries.~~

~~7. Not sexually harass clients. Sexual harassment includes sexual advances; sexual solicitation; requests for sexual favors; and other verbal, written, electronic, or physical contact of a sexual nature.~~]

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

VA.R. Doc. No. R21-6341; Filed August 25, 2022, 12:00 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 will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-50. Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund (amending 22VAC30-50-60, 22VAC30-50-120).**

Statutory Authority: §§ 51.5-131 and 51.5-181 of the Code of Virginia.

Effective Date: October 27, 2022.

Agency Contact: Charlotte Arbogast, Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, TDD (800) 464-9950, or charlotte.arbogast@dars.virginia.gov.

Summary:

Pursuant to Item 330 M 2 of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the amendments conform regulatory text to the language in the Appropriation Act item allowing the Commissioner of the Department for Aging and Rehabilitative Services to reallocate up to $500,000 from unexpended balances in the Commonwealth Neurotrauma Initiative Trust Fund to fund new grant awards for research on traumatic brain and spinal cord injuries.

22VAC30-50-60. Requests for proposals.

The advisory board shall solicit applications for grants of moneys from the fund by issuing RFPs from time to time. These RFPs shall be issued at the discretion of the advisory board and shall depend upon the availability of moneys in the fund. ~~Notwithstanding 22VAC30-50-120, each~~ Each application for a grant must be submitted in response to an actual RFP and received by a deadline specified in the RFP.

22VAC30-50-120. Unexpended funds.

~~The~~ Notwithstanding any other law to the contrary, the commissioner may reallocate up to $500,000 from unexpended balances in the fund for new grant awards for research on traumatic brain and spinal cord injuries.

VA.R. Doc. No. R23-7044; Filed August 25, 2022, 12:20 p.m.

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 will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-110. Assessment in Assisted Living Facilities (amending 22VAC30-110-10, 22VAC30-110-20, 22VAC30-110-30).**

Statutory Authority: §§ 51.5-131 and 51.5-146 of the Code of Virginia.

Effective Date: October 27, 2022.

Agency Contact: Paige McCleary, Adult Services and Adult Protective Services Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

Summary:

Pursuant to Item 335 F of Chapter 2 of the 2022 Acts of Assembly, Special Session I (Appropriation Act), the amendments (i) remove the responsibility of the Department of Medical Assistance Services to reimburse assessors for conducting assisted living facility assessments and add language to indicate that the cost of assessments conducted by qualified assessors identified in the regulation for public pay individuals shall be borne by each entity conducting the assessment; and (ii) update a citation to the Code of Virginia.

22VAC30-110-10. Definitions.

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

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administrator" means the licensee or person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for assisted living facilities.

"Assessment" means a standardized approach using common definitions to gather sufficient information about an individual applying to or residing in an assisted living facility to determine the need for appropriate level of care and services.

"Assisted living care" means a level of service provided by an assisted living facility to individuals who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" or "ALF" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Department of Social Services as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement the income of an individual who is receiving Supplemental Security Income (SSI) or an individual who would be eligible for SSI except for excess income, and who resides in an ALF, an adult foster care home, or supportive housing setting with an established rate in the Appropriation Act. The total number of individuals within the Commonwealth of Virginia eligible to receive auxiliary grants in a supportive housing setting shall not exceed the number individuals designated in the Virginia law and the signed agreement between the department and the Social Security Administration.

"Case management" means multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components, such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.

"Case management agency" means a public human service agency ~~which~~ that employs a case manager or contracts for case management.

"Case manager" means an employee of a public human services agency who is qualified to perform assessments and to develop and coordinate plans of care.

"Department" or "DARS" means the Virginia Department for Aging and Rehabilitative Services.

"Department designated case management system" means the official state automated computer system that collects and maintains information on assessments conducted by employees of the local department who meet the definition of qualified assessor.

"Dependent" means the individual needs the assistance of another person or needs the assistance of another person and equipment or a device to safely complete an ADL or IADL. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the individual's behavior is aggressive, abusive, or disruptive.

"Discharge" means the process that ends an individual's stay in the ALF.

"Emergency placement" means the temporary status of an individual in an ALF when the individual's health and safety would be jeopardized by denying entry into the facility until requirements for admission have been met.

"Face-to-face" means interacting with an individual in need of an assessment in a manner that enables the qualified assessor or case manager to observe the individual's behavior and ability to perform ADLs and IADLs.

"Facility" means an ALF.

"Independent physician" means a physician who is chosen by an individual residing in the ALF and who has no financial interest in the ALF, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Instrumental activities of daily living" or "IADLs" means for the purposes of this chapter, meal preparation, housekeeping, laundry, and money management. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

"Medication administration" means for purposes of this chapter, assessing the degree of assistance an individual requires to take medications in order to determine the individual's appropriate level of care.

"Minimal assistance" means dependency in only one ADL or dependency in one or more IADLs as documented on the uniform assessment instrument. Included in this level of services are individuals who are dependent in medication administration as documented on the UAI.

"Moderate assistance" means dependency in two or more ADLs as documented on the UAI.

"Private pay" means that an individual residing in an ALF is not eligible for the Auxiliary Grants Program.

"Prohibited conditions" means physical or mental health conditions or care needs as described in § 63.2-1805 of the Code of Virginia. An ALF shall not admit or allow the continued residence of an individual with a prohibited condition. Prohibited conditions include an individual who requires maximum physical assistance as documented on the uniform assessment instrument and meets nursing facility level of care criteria as defined in the State Plan for Medical Assistance. Unless the individual's independent physician determines otherwise, an individual who requires maximum physical assistance and meets nursing facility level of care criteria as defined on the State Plan for Medical Assistance shall not be admitted to or continue to reside in an ALF.

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-200 et seq. and 63.2-300 et seq.) of Title 63.2, Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, or hospitals operated by the state under Chapters ~~6.1 and 9 (§§ 23-50.4 et seq. and 23-62 et seq.) of Title 23~~ 22 (§ 23.1-2200 et seq.) and 23 (§ 23.1-2300 et seq.) of Title 23.1 of the Code of Virginia and supported wholly or principally by public funds, including ~~but not limited to~~ funds provided expressly for the purposes of case management.

"Public pay" means that an individual residing in an ALF is eligible for the Auxiliary Grants Program.

"Qualified assessor" means a person who is authorized to perform an assessment, reassessment, or change in level of care for an individual who is seeking admission to an ALF or who resides in an ALF. For public pay individuals, a qualified assessor is an employee of a public human services agency who is trained in the completion of the uniform assessment instrument and is authorized to approve placement for an individual who is seeking admission to or residing in an ALF. For private pay individuals, a qualified assessor is staff of the ALF trained in the completion of the uniform assessment instrument or an independent physician or a qualified assessor for public pay individuals.

"Reassessment" means an update of information on the UAI after the initial assessment. In addition to an annual reassessment, a reassessment shall be completed whenever there is a significant change in the individual's condition.

"Residential living care" means a level of service provided by an ALF for individuals who may have physical or mental impairments and require only minimal assistance. The definition of residential living care includes the services provided by the ALF to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Significant change" means a change in an individual's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a

well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an individual who is receiving an auxiliary grant in an ALF who meets the criteria set forth in 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an ADL.

"Uniform assessment instrument" or "UAI" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument that may be used for individuals paying privately to reside in the ALF.

"Virginia Department of Medical Assistance Services" or "DMAS" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

22VAC30-110-20. Individuals to be assessed.

A. All individuals applying to or residing in an ALF shall be assessed face-to-face using the UAI prior to admission, at least annually, and whenever there is a significant change in the individual's condition.

1. When the qualified assessor or case manager and individual are unable to be in the same physical space to conduct an assessment due to the individual's location in another state or due to hazardous travel conditions for the qualified assessor or case manager, the use of video conferencing to conduct the assessment shall be permitted.

2. The appropriate qualified assessor or case manager shall review the assessment with the adult within seven working days of admission to the ALF to ensure all assessment information is accurate.

B. For private pay individuals, qualified staff of the ALF or an independent physician may complete the UAI. Qualified staff are ALF employees who have successfully completed department designated training course on the UAI for either public or private pay assessments. The ALF maintains documentation of the completed training. The administrator or the administrator's designated representative shall approve and sign the completed UAI for private pay individuals. A private pay individual may request the assessment be completed by a qualified public human services agency assessor. When a public human services agency assessor completes the UAI for a private pay individual, the agency may determine and charge a fee for private pay assessments ~~that may not exceed the amount DMAS reimburses for public pay assessments~~.

C. For public pay individuals, the UAI shall be completed by a case manager or a qualified assessor to determine the need for residential care or assisted living care services. The assessor is qualified to complete the assessment if the assessor has completed the department designated training course on the UAI. Assessors who prior to January 1, 2004, routinely completed UAIs as part of their job descriptions may be deemed to be qualified assessors without the completion of the training course. Qualified assessors who may initially authorize ALF services for public pay individuals are employees of:

1. Local departments;

2. Area agencies on aging;

3. Centers for independent living;

4. Community services boards or behavioral health authorities;

5. Local departments of health;

6. State facilities operated by the Department of Behavioral Health and Developmental Services;

7. Acute-care hospitals;

8. Department of Corrections; and

9. Independent physicians who have a signed provider agreement with DMAS to conduct ALF assessments.

D. For public pay individuals, the ALF shall coordinate with the qualified assessor or case manager to ensure that the UAI is completed as required. If the individual has not been assessed, the local department benefits worker shall inform the individual or the individual's legal representative of the need to be assessed prior to admission. If the individual has not applied for an auxiliary grant, the qualified assessor or case manager conducting the assessment shall inform the individual or the individual's legal representative of the need to submit an application for an auxiliary grant.

E. The cost of ALF assessments conducted by qualified assessors identified in this section for public pay individuals shall be borne by each entity conducting the assessment.

22VAC30-110-30. Determination of services to be provided.

A. The assessment shall be conducted using the UAI. The UAI is comprised of a short assessment and a full assessment. The short assessment is designed to briefly assess the individual's need for appropriate level of care and services and to determine if a full assessment is needed.

B. The following sections of the UAI shall be completed as follows:

1. For private pay individuals, the assessment shall include sections related to identification and background, functional status, which includes ADLs, continence, ambulation, IADLs, medication administration, and behavior pattern. The private pay or public pay UAI may be used.

2. For public pay individuals, the short form of the UAI shall be completed. The short form consists of sections related to identification and background, and functional status (i.e., the first four pages of the UAI), plus sections on medication administration, and behavior pattern. If, upon assessment, it is determined that the individual is dependent in at least two ADLs or is dependent in behavior, then the full assessment shall be completed.

3. For private pay and public pay individuals, the prohibited conditions section shall be completed.

C. The UAI shall be completed within 90 days prior to the date of admission to the ALF. If there has been a significant change in the individual's condition since the completion of the UAI that would affect the admission to an ALF, a new UAI shall be completed as specified in 22VAC30-110-20.

D. When an individual moves to an ALF from another ALF, a new UAI is not required except that a new UAI shall be completed whenever there is a significant change in the individual's condition or the most recent UAI was completed more than 12 months ago.

E. In emergency placements, the UAI shall be completed within seven working days from the date of placement. An emergency placement shall occur only when the emergency is documented and approved by (i) a local department adult protective services worker for public pay individuals or ~~by~~ (ii) a local department adult protective services worker or independent physician for private pay individuals.

F. The UAI shall be completed annually on all individuals residing in ALFs and whenever there is a significant change in the individual's condition.

G. The ALF shall provide an area for assessments and reassessment to be conducted that ensures the individual's privacy and protects confidentiality.

H. At the request of the ALF, the individual residing in the ALF, the individual's legal representative, the individual's physician, the Virginia Department of Social Services, or the local department, an independent assessment using the UAI shall be completed to determine whether the individual's care needs are being met in the current ALF. An independent assessment is an assessment that is completed by an entity other than the original assessor. The ALF shall assist the individual in obtaining the independent assessment as requested. If the request is for a private pay individual, the entity requesting the independent assessment shall be responsible for paying for the assessment.

I. The assessor shall consult with other appropriate human service professionals as needed to complete the assessment.

J. Qualified assessors who are employees of local departments shall enter ALF assessments in the department designated case management system.

~~K. DMAS shall reimburse for completion of assessments and authorization of ALF placement for public pay individuals pursuant to this section.~~

VA.R. Doc. No. R23-6719; Filed August 25, 2022, 12:21 p.m.

STATE BOARD OF SOCIAL SERVICES

Emergency Regulation

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-160, 22VAC40-705-170).**

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

Effective Dates: September 2, 2022, through March 1, 2024.

Agency Contact: Kristen Eckstein, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7897, or email kristen.eckstein@dss.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

The amendments remove the notary requirement for the consent an individual signs requesting a search of the Central Registry System (CRS) to determine an individual has no founded case of child abuse or neglect. The purpose of the amendments is to expedite searches by the Central Virginia Child Abuse and Neglect Central Registry Unit of CRS to make it less burdensome for individuals who wish to provide services or care to children through employment, foster care, adoption, or volunteer opportunities.

22VAC40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.

2. Report to the regional medical examiner's office pursuant to § 63.2-1503 E of the Code of Virginia.

3. Any individual, including an individual against whom allegations of child abuse or neglect were made, may exercise his rights under the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) to access personal information related to

himself that is contained in the case record including, with the individual's ~~notarized~~ signed consent, a search of the Central Registry.

4. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

5. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

6. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

7. An individual's right to access information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 63.2-1526 C of the Code of Virginia.

8. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22VAC40-705-140.

9. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

10. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 A of the Code of Virginia.

11. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to § 16.1-266 G of the Code of Virginia.

12. In any case properly before a court having jurisdiction, if the court orders the local department to disclose information from a child abuse or neglect case record, the local department must either comply with the order if permitted under federal and state law or appeal the order if such disclosure is contrary to federal and state law.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and ongoing services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.2-105 of the Code of Virginia.

C. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.2-105 of the Code of Virginia, the local department must consider the factors described in subdivisions 1, 2, and 3 of this subsection as some of the factors necessary to determine whether a person has a legitimate interest and the disclosure of information is in the best interest of the child:

1. The information will be used only for the purpose for which it is made available;

2. Such purpose shall be related to the goal of child protective or rehabilitative services; and

3. The confidential character of the information will be preserved to the greatest extent possible.

D. In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person the following information: (i) the name of the person reporting incidents of child abuse or neglect; (ii) any information that may endanger the well-being of a child if such information or records are disclosed or released; (iii) information that pertains to the identity of a collateral witness or any other person if such disclosure may endanger life or safety; or (iv) information that is otherwise prohibited from being disclosed or released by state or federal law or regulation.

E. In all complaints or reports that are being investigated jointly with law enforcement, the local department shall release child protective services information in accordance with the following:

1. Pursuant to § 63.2-1516.1 B of the Code of Virginia, no information in the possession of the local department from such joint investigation shall be released by the local department prior to the conclusion of the criminal investigation except as authorized by the investigating law-enforcement officer, the law-enforcement officer's supervisor, or the local attorney for the Commonwealth.

2. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall provide the attorney for the Commonwealth and the local law-enforcement agency with the information and records of the local department related to the investigation of the complaint, including records related to any complaints of abuse or neglect involving the victim or the alleged abuser or neglector, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect.

F. Pursuant to §§ 63.2-1505 B and 63.2-1506 B of the Code of Virginia, the local department, upon request, must disclose to the child's parent or guardian the location of the child, provided that:

1. The investigation or family assessment has not been completed;

2. The parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect;

3. The parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody;

4. The local department is not aware of any court order and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and

5. Disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

22VAC40-705-170. Access to Central Registry.

A. The department will complete a search of the Central Registry upon request by a local department, upon receipt of a ~~notarized~~ signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

B. When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.

VA.R. Doc. No. R23-7198; Filed September 2, 2022, 8:18 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

STATE BOARD OF EDUCATION

Title of Document: 2022 Model Policies on the Privacy, Dignity, and Respect for All Students and Parents in Virginia's Public Schools.

Public Comment Deadline: October 26, 2022.

Effective Date: October 27, 2022.

Agency Contact: Emily Webb, Office of the Superintendent, Department of Education, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2057, or email policy@doe.virginia.gov.

BOARD OF OPTOMETRY

Titles of Documents: Guidance on End of a Contract Lens Fitting.

Guidance on Performing Free Eye Screenings.

Public Comment Deadline: October 26, 2022.

Effective Date: October 27, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF PHARMACY

Titles of Documents: Criminal Background Checks of Material Owners for Pharmaceutical Processor or Cannabis Dispensing Facility Permits.

Life of a Prescription or Written Certification When the Prescriber Is No Longer in Practice.

Guidance for Pharmacies within Opioid Treatment Programs.

Pharmacy Interns as Pharmacy Technicians; Pharmacy Technician Ratio.

Guidance on Virginia Prescription Requirements.

Public Comment Deadline: October 26, 2022.

Effective Date: October 27, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Titles of Documents: Supplemental Nutrition Assistance Program Manual.

Temporary Assistance for Needy Families Manual.

Public Comment Deadline: October 26, 2022.

Effective Date: October 27, 2022.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations, and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email nikki.clarke@dss.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Chaudhry Properties Inc. and Shani Inc.

An enforcement action has been proposed for Chaudhry Properties Inc. and Shani Inc. for violations at Timberlake Citgo, 22539 Timberlake Road, Lynchburg, Virginia. The Virginia Department of Environmental Quality (DEQ) proposes to issue a special order by consent to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the DEQ office listed or online at https://www.deq.virginia.gov/permits-regulations/public-notices. DEQ will accept comments from September 26, 2022, to October 26, 2022.

Contact Information: Carla Pool, Adjudication Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3666, or email carla.pool@deq.virginia.gov.

Proposed Consent Order for Herndon Car Wash LLC

An enforcement action has been proposed for Herndon Car Wash LLC for violations at the Flagship Car Wash in Herndon, Virginia. The Virginia Department of Environmental Quality (DEQ) proposes to issue a special order by consent to Herndon Car Wash LLC to address noncompliance with the State Water Control Law, regulations, and VPDES Permit Registration No. VAG750190. A description of the proposed action is available at the DEQ office listed or online at https://www.deq.virginia.gov/permits-regulations/public-notices. DEQ staff will accept comments by email or postal mail from September 26, 2022, through October 26, 2022

Contact Information: Carla Pool, Enforcement Adjudication Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, FAX (804) 698-4178, or email carla.pool@deq.virginia.gov.

Proposed Enforcement Action for the Peninsula Airport Commission

An enforcement action has been proposed for Peninsula Airport Commission for violations of State Water Control Law at Newport News/Williamsburg International Airport, Newport News, Virginia. A description of the proposed action is available at the Virginia Department of Environmental Quality (DEQ) office listed or online at www.deq.virginia.gov. DEQ will accept comments from September 26, 2022, to October 26, 2022.

Contact Information: Thomas Jackson, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email thomas.jackson@deq.virginia.gov.

Danville BESS 1 Project Notice of Intent for Small Renewable Energy Storage Facility - City of Danville

Doc Brown LLC, which is a wholly owned subsidiary of Delorean Power LLC, the project developer, 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 storage project in the City of Danville.

The project, Danville BESS 1, will be subject to provisions in 9VAC15-100-130 because the rated capacity of the project will be 10.5 megawatts and 24.6 megawatt hours with a disturbance zone of less than 10 acres. The project is located at 864 Monument Street, Danville, Virginia, at coordinates 36.578883, -79.384089. The project is a battery energy storage system comprised of lithium iron phosphate batteries in eight enclosures across an area of approximately 10,000 square feet and has a nameplate capacity of 10.5 megawatts and 24.6 megawatt hours. Each enclosure contains battery cells grouped in modules, trays, and racks along with control, fire protection, and HVAC systems that keep the batteries within safe operating limits. Battery output is connected to the Danville distribution network via power conversion equipment and a set of transformers, switchgear, and underground cabling. Site interconnection is derived from two independent existing overhead 12.47-kilovolt 556 aluminum-conductor steel-reinforced cable circuits that run parallel to Industrial Avenue in Danville. The site maintains two points of interconnection to ensure adequate power flow but will be operated as a single project. The primary entrance for the facility is inside the secured perimeter of the Danville Utilities, 864 Monument Street, Danville, Virginia.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Scout Energy Storage Facility Project Notice of Intent for Small Renewable Energy Storage Facility - Accomack County

Jupiter Power LLC on behalf of Scout Storage 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 storage project in Accomack County, Virginia.

The project, Scout Energy Storage Facility, will be subject to provision 9VAC15-100-130 B because the facility will have a disturbance zone less than 10 acres. The project consists of an up-to-80-megawatt utility-scale battery energy storage facility located near the intersection of Chincoteague Road (State Route 175) and Fleming Road (State Route 679) in Wattsville, Virginia, on approximately 11.6 acres. Centroid latitude and longitude coordinates are 37.9334765, -75.5015257.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

VA Cox Cartersville (Ampthill Road) Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Cumberland County

VA Cox Cartersville (Ampthill Road) Solar Project has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Cumberland County. VA Cox Cartersville (Ampthill Road) Solar Project will be located approximately 1.5 miles west of Cartersville, Virginia. Latitude and longitude coordinates are 37.67067, -78.121102. The proposed project is an approximately 16-megawatt alternative current photovoltaic (PV) ground-mounted solar facility. The footprint area of the project is approximately 80 acres. The solar array is comprised of solar PV modules (estimated at 39,960 modules) attached to a fixed tilt racking system that is anchored by a series of pile driven posts.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment Period for 1915(c) Home and Community Based Services Medicaid Waivers

The Department of Medical Assistance Services (DMAS) and the Department of Behavioral Health and Developmental Services (DBHDS) welcome public comment regarding the submission to the U.S. Centers for Medicare and Medicaid Services (CMS) amended applications for the following 1915(c) Home and Community Based Services (HCBS) Medicaid Waivers: Community Living (CL) Waiver; Family and Individual Supports (FIS) Waiver; and Building Independence (BI) Waiver.

The 1915(c) HCBS Waiver amended applications can be located at https://dmas.virginia.gov/for-providers/long-term-care/waivers/.

In 2021, general assembly budget language directed DMAS to review options for allowing continued permanent use of telehealth platforms in service delivery. Stakeholder groups were held in April and May 2021. The services that DMAS believed could include a telehealth component were divided into three implementation phases based on their difficulty to operationalize ongoing telehealth or because additional research was needed.

Proposed amendment services for phase one are included for current review and involve (i) benefits planning services; (ii) community engagement services; (iii) community guide services; (iv) individual and family/caregiver training; (v) independent living support services; (vi) in-home support services; (vii) peer mentor services; (viii) services facilitation; and (ix) therapeutic consultation services.

Additional changes to the waivers include increasing the maximum percentage in which community guide providers can perform activities that do not interact with the waiver individual and, pursuant to the 2020 General Assembly, reducing the minimum number of hours needed to work to four in order to earn the special earnings allowance deduction on patient pay.

Instructions for public comment submissions:

1. Comments may be submitted through the Virginia Regulatory Town Hall public comment forum.

2. Comments may be sent within an email or placed within a Microsoft Word document to ddwaiver@dmas.virginia.gov.

3. Comments may be sent via U.S. postal mail to:

Department of Medicaid Assistance Services

ATTN: Donna Boyce, Senior Program Advisor, Division of High Needs Supports

600 East Broad Street, Suite 1300

Richmond, VA 23219

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.

Draft Developmental Disabilities Waiver Provider Manual

The draft Developmental Disabilities Waiver Provider Manual Chapters II, IV, and Appendix D are now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until September 28, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Eligibility Manual

Please see the full text of updates effective October 1, 2022, to the Eligibility Manual at https://www.dmas.virginia.gov/for-applicants/eligibility-guidance/broadcasts-and-transmittals/.

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.

Draft Physician or Practitioner Provider Manual

The draft Physician or Practitioner Manual Chapters IV and V are now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.