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INFORMATION ABOUT THE VIRGINIA REGISTER OF REGULATIONS

VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations.*

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the Virginia Register a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register,* sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register.*

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register.* Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register.*

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register.* If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-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 twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before final action is taken.

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register.*

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose 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 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) 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. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

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VIRGINIA HOUSING DEVELOPMENT AUTHORITY

NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation Program (Formerly: Procedures, Instructions and Guidelines for Section 8 Moderate Rehabilitation Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

Summary:

Pursuant to its Rules and Regulations, the Authority has previously adopted Procedures, Instructions and Guidelines to set forth the requirements and procedures for its programs. The use by the Authority of both its Rules and Regulations and its Procedures, Instructions and Guidelines with respect to the Authority's programs has, in certain instances, resulted in unnecessary duplication of provisions and may have created confusion as to applicable procedures and requirements.

The proposed amendments will adopt and incorporate the provisions of the Authority's Procedures, Instructions and Guidelines into its Rules and Regulations. The amendments also include certain changes for clarification and technical correction of existing provisions in the Rules and Regulations and the Procedures, Instructions and Guidelines.

The Authority is amending 16 regulations. Seven of the regulations appeared in the April 24, 1989, issue of The Virginia Register. The remaining nine regulations are being printed in this issue of The Virginia Register.

NOTICE: A summary will not be provided with each regulation since each summary is identical to the one above.

VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation Program.

§ 1. General program description.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to the moderate rehabilitation of rental housing units subsidized under Section 8 of the U.S. Housing Act of 1937, as amended ("section 8") and the applicable rules and regulations promulgated pursuant thereto ("section 8 rules and regulations"). These ~~procedures, instructions and guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing of applications. Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any application to waive or modify any provision herein where deemed appropriate by him for good cause. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority.

The section 8 moderate rehabilitation program (the "program") is designed to:

~~a.~~ *1.* Rehabilitate rental units which are now substandard or have major building components which will within two years need repair or replacement;

~~b.~~ *2.* Provide a rental income to an owner that will repay rehabilitation costs, meet monthly operating expenses, and allow a reasonable profit (not to exceed 8.0%) on the owner's equity investment in the property; and

~~c.~~ *3.* Provide rental subsidies under section 8 to low and very low income families and elderly, handicapped, or disabled persons living in the rehabilitated units.

Section 8 funding is received from time to time by the authority from the U.S. Department of Housing and Urban Development ("HUD"). The authority then solicits and receives requests from local governmental entities for allocations of such section 8 funds to their localities. After approval of such requests, owners of rental housing in such localities may submit applications for section 8 funds under the program. The executive director may take such action as he deems necessary or appropriate in order to solicit such requests from local governmental entities and applications from owners of rental housing in the applicable localities.

Owners of rental housing interested in participating in this program must first submit applications to the authority meeting program requirements described herein. The application shall be in such form and shall contain such

relevant information as the executive director may require. Applications will be reviewed and, if appropriate, approved on a first-come, first-serve basis. After receiving an approved application, the authority will inspect the owner's rental unit(s), determine the work items necessary to bring the unit(s) up to the authority's moderate rehabilitation standards, and estimate the cost of these improvements. To be eligible for the program, a unit must require improvements costing a minimum of $1,000.

Feasibility of an owner's application will be determined, taking into account current rents or operating expenses, the estimated cost of required improvements, and the terms of available financing. Owner applications will be selected based upon the authority's evaluation of feasible proposals.

Selection of an owner's application is contingent upon the authority's determination that the tenant then occupying the unit to be rehabilitated is eligible to receive section 8 rental assistance under the program. The authority will not permit ineligible families to be displaced. Therefore, the authority will not provide subsidy under the program for units occupied by ineligible families at the time of submission of the application. However, the owner may rehabilitate these units as part of a general upgrading of the property.

The authority will assist the owner in preparing rehabilitation work write-ups (detailed description of the proposed rehabilitation and estimates of the costs thereof), selecting a contractor, and obtaining financing for the work to be completed. When construction is ready to begin and financing has been arranged, the authority will execute an agreement to enter into housing assistance payments contract (the "agreement") which provides that, upon satisfactory completion of all specified improvements in accordance therewith, the unit(s) will be subject to a housing assistance payments contract (the "HAP contract") at a specified rent.

Upon completion of all required improvements to the unit(s), the authority and the owner will execute a 15-year ~~Housing Assistance Payments Contract (the "HAP Contract")~~ *HAP contract* which establishes the rent ("contract rent") for the unit(s) and describes the rights and responsibilities of the owner and the authority throughout the 15-year term. Subsequent to completion of the required improvements, the authority and its administrative agent ("administrative agent") shall perform their respective administrative functions and responsibilities with respect to the section 8 subsidy and HAP contract as set forth in the authority's ~~Procedures, Instructions and Guidelines~~ *rules and regulations* for section 8 existing housing assistance payments program.

The initial occupant of a rehabilitated unit may be either the owner's current tenant or a family selected by the owner from the waiting list maintained by the administrative agent. Vacancies occurring after initial occupancy are to be filled by the owner first from among families on such waiting list. If this waiting list is not sufficient, the owner may solicit his own tenants.

Tenants occupy the units and receive assistance by signing a lease in the form required by the authority and other documentation required by HUD. The tenants must comply with all applicable requirements imposed by HUD under the section 8 rules and regulations and the program. The tenant pays no more than 30% of his adjusted income (as determined in accordance with the section 8 rules and regulations) for rent and utilities, to the extent of the allowance therefor. The difference between the rent (plus any utility allowance) and the tenant's contribution is paid as housing assistance payments to the owner by the authority with section 8 subsidy funds received from HUD. The housing assistance payments are applied by the owner toward the rent on the rental housing unit. The tenant pays directly to the owner the portion of the rent not paid by the authority. In certain instances, the amount of the housing assistance payments may exceed the rent, and the balance is paid by the authority to the tenant as a utility allowance.

Housing assistance payments may be made available to eligible persons and families pursuant to these rules and regulations only if and to the extent that the authority has received from HUD section 8 subsidy funds therefor.

The program shall in all respects be governed by, and administered in accordance with, the section 8 rules and regulations and all other applicable procedures and requirements imposed by HUD with respect to the program. The section 8 rules and regulations and such other procedures and requirements imposed by HUD shall control over any inconsistent provision herein.

The executive director or any authorized officer of the authority acting under his supervision is authorized to act on behalf of the authority with respect to all matters hereunder. The executive director or such authorized officer may delegate all or part of his authority to any employee who is acting under his control and supervision.

§ 2. Eligible rental housing.

Housing assisted under the program must be located within an area for which ~~VHDA~~ *the authority* has received funding from HUD. The authority must have also been requested by the local governmental entity to make section 8 funding available.

In general, any type of single-family or multi-family rental housing within this area which requires rehabilitation costing at least $1,000 per unit in order to meet the authority's moderate rehabilitation standards is eligible. However, the following special categories of housing are not eligible under the program:

1. Subject to certain exceptions permitted by HUD, any units subsidized under any federal housing program within the past year.

2. Housing on which the mortgage loan is owned or held by HUD (does not include FHA-insured mortgage loans).

3. Nursing homes or housing located on the grounds of any remedial institution. In general, any housing which provides continual medical and psychiatric services is ineligible.

4. Housing owned by a state or general purpose unit of local government unless HUD has approved the site and ownership is transferred to another owner before an agreement is executed.

5. Units for families with children located in a high-rise elevator building, unless approved by HUD.

6. Mobile homes.

7. Owner-occupied housing (cooperative housing is considered rental housing, however, and is eligible for the program).

All housing assisted under the program must meet certain site and neighborhood performance requirements established by HUD. Sites must be of adequate size, must be served by adequate streets and private facilities and services, and must be located within a reasonable commuting distance of employment opportunities.

§ 3. Eligible owners.

All owners of eligible property may participate in the program with the exception of the following (who are excluded during their tenure and for one year thereafter from participation because their relationship with the authority or the program would constitute a prohibited interest under federal regulations): ~~(1)~~ *(i)* present or former members or officers of the authority or the administrative agent, ~~(2)~~ *(ii)* employees of the authority or the administrative agent who formulate policy or influence decisions with respect to the program, and ~~(3)~~ *(iii)* public officials or members of a governing body or state or local legislators who exercise functions or responsibilities with respect to the program. In addition, current members of or delegates to the Congress of the United States of America or resident commissioners are not eligible property owners.

§ 4. Eligible tenants.

Any tenant occupying a unit at the time of submission of the application must be eligible to participate in the program in order for that unit to be assisted (subject to certain exceptions established by HUD). Initial tenant eligibility is based on the following criteria:

~~a.~~ *1.* The tenant must be a single person or must qualify as a family (as defined by HUD) of two or more persons.

~~b.~~ *2.* The tenant must have a family income which does not exceed the applicable income limits established by HUD.

~~c.~~ *3.* The tenant must at the time of submission of the application be occupying a suitably sized unit or a suitably sized unit must be available to him in the same building or complex after rehabilitation. Generally, this requires that there be a living room, kitchen area and bathroom, and at least one sleeping or living/sleeping room for each two persons in the household. Except for husband and wife and very young children, however, persons of the opposite sex should not be required or permitted to occupy the same bedroom.

Owners may not combine two or more units, if that rehabilitation activity will result in fewer units than tenants currently in residence and therefore require displacement.

§ 5. Rehabilitation standards.

Housing units rehabilitated under the program must meet the following standards:

~~a.~~ *1.* The authority's moderate rehabilitation standards. Subject to HUD approval, the executive director is authorized to establish and from time to time modify moderate rehabilitation standards which shall specify the standards for work and materials to be incorporated into the rehabilitation of housing units under the program. Housing units proposed for rehabilitation under the program will be inspected by the authority for compliance with the authority's moderate rehabilitation standards. All state and local building codes are incorporated by reference in the moderate rehabilitation standards, and in the event of any conflict or inconsistency between such codes and the standards expressly set forth therein, the more restrictive standards shall control over the less restrictive standards. A copy of these standards shall be available upon request. All deficiencies found in the inspection must be corrected by the owner as part of the owner's rehabilitation activity.

~~b.~~ *2.* Standards for repair/replacement of major building systems or components in danger of failure. Eligible rehabilitation activities under this program include work to major building systems or components which can be expected to fail within two years. Such work is basically limited to complete wiring, new plumbing pipes, new boiler or furnace or heating distribution pipes, new roof, and exterior structural elements.

~~c.~~ *3.* Cosmetic, optional, or routine maintenance items. Rehabilitation items not required by the authority are not considered eligible work items under the program. Routine maintenance activities, such as repainting, are also not eligible items. If the owner elects to

undertake cosmetic, optional, or routine maintenance work while also doing eligible work, only the cost of the eligible work will be taken into account in calculating the contract rent.

~~d.~~ *4.* Required energy-conserving improvements. Caulking and weatherstripping are required in all units rehabilitated under the program. The authority will require other energy-conserving improvements such as insulating windows and floor, wall and ceiling insulation if economically feasible.

~~e.~~ *5.* Accessibility for the handicapped. Property improvements to make a housing unit accessible to the physically handicapped are eligible under the program. If an owner anticipates making such improvements, the authority will assist in evaluating the work required.

~~f.~~ *6.* Rehabilitation work standards. All rehabilitation work under the program must be completed in a cost efficient and workmanlike manner. Extravagant or luxury quality improvements are not allowable. All work should be of sufficient quality to serve for the duration of the 15-year HAP contract, and any improvements for which building permits are required must meet local building code quality standards.

~~g.~~ *7.* $1,000 minimum. Housing units rehabilitated under the program must require improvements costing at least $1,000 per unit in order to meet the above standards.

§ 6. Determination of contract rents for rehabilitated units.

The contract rent for a rehabilitated unit is calculated using a two-step process. The authority first computes a "base rent" for the owner's unit and then adds to it the monthly cost of amortizing the owner's rehabilitation expenditure.

~~a.~~ *A.* Base rent.

The base rent shall be calculated in accordance with whichever of the following methods produces the higher rent:

~~(1)~~ *1.* The average rent collected for the unit during the 18 months preceding the owner's proposal, plus an adjustment factor for inflation and trending; or

~~(ii)~~ *2.* A rent based on the anticipated costs of owning, managing and maintaining the rehabilitated unit. The formula used to calculate this base rent takes into account all operating expenses and allows a return (not to exceed 8.0%) on owner equity.

~~b.~~ *B.* Monthly debt service.

To the base rent is added the actual or imputed monthly per unit debt service cost for eligible rehabilitation costs, including the cost of any required temporary relocation of current tenants during the rehabilitation period.

~~c.~~ *C.* Maximum contract rent for rehabilitated units.

The contract rent for a rehabilitated unit plus the allowance for any utilities to be paid by the tenant may not exceed the moderate rehabilitation fair market rent established by HUD for a unit of that size. The allowances for any utilities to be paid by tenant will be established by the authority and will be made available to the owner upon request.

~~d.~~ *D.* When contract rents are determined.

Contract rents are tentatively calculated and the feasibility of the owner's proposal evaluated at several times during the processing period, as information concerning base rents, anticipated rehabilitation costs, and the terms of financing is received by the authority. The final calculation of the contract rent is made after the rehabilitation work has been completed and the owner's construction costs, temporary relocation costs, and financing terms are established, subject to the approval of the authority.

§ 7. Fair market rents for rehabilitated units.

The moderate rehabilitation fair market rents, including the cost of utilities, for units assisted under the program are established from time to time by HUD.

§ 8. Sources of financing for rehabilitation.

Property owners participating in the program may obtain financing for rehabilitation expenses from a number of sources, including the following:

1. Owner financing. Owners may pay for property improvements using personal savings, personal credit cards or store accounts.

2. Banks, savings and loan associations, and other lending institutions. Owners may obtain financing from any commercial lending institution, including commercial banks, savings and loan associations, and credit unions.

3. Publicly funded or assisted rehabilitation grant and loan program. Owners participating in the program may also qualify for rehabilitation financing made available through the redevelopment and housing authority, housing agency and/or industrial development authority.

4. The authority. The authority may from time to time make financing available for the rehabilitation. In the case of such financing, the application for such financing shall be processed, the improvements shall be completed, and the rehabilitated unit shall be

owned, operated and managed, all in accordance with the authority's ~~Procedures, Instructions and Guidelines~~ *rules and regulations* for multi-family housing developments, to the extent required by the authority consistent with the section 8 rules and regulations.

§ 9. Federal requirements which the owner must meet during rehabilitation and management.

An owner shall comply with the section 8 rules and regulations and all other applicable federal requirements under the program. In addition, the authority may take into account applicable environmental laws and requirements in evaluating and selecting owner proposals.

§ 10. Processing of owner proposals.

Owner proposals submitted to the authority will be processed as follows:

Step 1 - Preparation and submission by owner of a proposal.

Step 2 - Preliminary screening of proposal by the authority and disqualification of incomplete or clearly ineligible proposals.

Step 3 - Inspection by the authority of owner's property to determine the work items necessary to bring the unit(s) up to program standards.

Step 4 - Preparation by the authority of list of deficiencies to be corrected, estimate by the authority of rehabilitation costs, and preliminary determination by the authority of project feasibility. Notification by the authority to the owner of results.

Step 5 - Selection for processing by the authority of owner's proposal.

Step 6 - Determination by the authority of eligibility of tenants currently occupying unit(s) to be rehabilitated. Notification by the authority to the owner of results.

Step 7 - Preparation by the owner and/or the authority of work write-ups, bidding of work, selection of contractor, preparation of lease, obtaining of financing, and final determination of project feasibility.

Step 8 - Execution of an agreement providing that upon owner's satisfactory completion of all required work, the authority will provide section 8 housing assistance payments on behalf of eligible tenants occupying the rehabilitated unit(s). Initial calculation of contract rent(s).

Step 9 - Execution by the owner and contractor of a construction contract and completion of required work. Inspection by the authority of work upon completion.

Step 10 - Recalculation by the authority of contract rent. Execution of a HAP contract by the owner and the authority.

Step 11 - Occupancy of the unit(s) by the assisted tenant(s), who may be the current eligible tenant(s) or tenant(s) selected by the owner from the locality's waiting list. Execution of an approved lease.

Step 12 - Commencement of section 8 housing assistance payments on behalf of the tenant. Performance by the owner, the authority and its administrative agent of all activities required following rehabilitation.

§ 11. Requirements following rehabilitation.

Subsequent to completion of the required improvements for any rental housing unit, the authority and its administrative agent shall perform their respective administrative functions and responsibilities with respect to the section 8 subsidy and HAP contract for such unit as set forth in the authority's ~~Procedures, Instructions and Guidelines~~ *rules and regulations* for section 8 existing housing assistance payments program. Following initial leasing of the assisted unit and during the entire period of the HAP contract, the owner must fill all vacancies with section 8 eligible families referred by the authority or its administrative agent, and where required by the authority, the owner shall develop and utilize tenant selection procedures and standards acceptable to the authority. The owner also must maintain the unit in its rehabilitated condition less normal wear and tear, and such maintenance of the unit will be monitored through annual inspections. The owner may not terminate a tenant lease except for tenant failure to comply with the lease or obligations under state law.

Annually, the authority will process requests by the owner for annual rent adjustments in accordance with the HAP contract. Special rent adjustments may also be approved by the authority in certain circumstances authorized by the HAP contract. The owner is also eligible to receive payments for vacancy losses, tenant damages and unpaid rent.

The maximum annual return or profit which the owner may receive from the rental of the assisted unit(s) shall not exceed 8.0% of the owner's equity as determined in accordance with HUD's requirements.

The owner must comply with all terms and conditions of the HAP contract and with the section 8 rules and regulations. The HAP contract between the authority and the owner shall have a term of 15 years, and any successive owner shall be subject to the terms and conditions of the HAP contract. The authority shall have the right to terminate the HAP contract in accordance with its terms in the event of noncompliance by the owner with its provisions.

* * * * * * * *

Title of Regulation: **VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program (Formerly: Procedures, Instructions and Guidelines for Virginia Rental Rehabilitation Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program.

§ 1. Definitions.

The following words and terms, when used herein, shall have the following meaning, unless the context indicates otherwise.

~~*"Executive Director"* means the Executive Director of VHDA or any other officer or employee of VHDA who is authorized to act on behalf of VHDA pursuant to a resolution of the Board.~~

"Grantee" means any unit of local government that enters into a grant agreement with ~~VHDA~~ *the authority* to administer a rental rehabilitation grant.

"HUD" means the U. S. Department of Housing and Urban Development.

"Section 8" means Section 8 of the United States Housing Act of 1937, as amended, and the applicable rules and regulations promulgated thereunder.

~~*"VHDA"* means Virginia Housing Development Authority.~~

These definitions supplement those contained in 24 CFR 511.2 and other applicable sections of the Code of Federal Regulations. Only those terms not defined in the ~~Federal~~ Code *of Federal Regulations* or used differently herein have been defined.

§ 2. Purpose and applicability.

These ~~procedures, instructions and guidelines~~ *rules and regulations* are adopted ~~pursuant to Rule 103 of the VHDA Rules and Regulations adopted on January 17, 1984,~~ pursuant to § 36-55.30:3 of the Code of Virginia.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* are applicable to all grants made by ~~VHDA~~ *the authority* to units of local government with funds allocated to ~~VHDA~~ *the authority* by HUD for the purpose of carrying out local rental rehabilitation programs for the benefit of lower income families and persons. Such grants are referred to herein as "rental rehabilitation grants."

Rental rehabilitation grants may be made to Grantees pursuant to these rules and regulations only if and to the extent that the authority has received from HUD grant funds available therefor.

These ~~procedures, instructions and guidelines~~ *rules and regulations* supplement and clarify rather than supercede federal program requirements. ~~VHDA~~ *The authority* and all local grantees are fully bound by the applicable requirements of 24 CFR Part 511, as well as governing federal and state laws in the administration and use of funds received from HUD under the federal Rental Rehabilitation Program.

Notwithstanding anything to the contrary herein, the Executive Director is authorized with respect to any rental rehabilitation grant to waive or modify any provisions herein where deemed appropriate by him for good cause, to the extent not inconsistent with ~~VHDA's~~ *the* Act ; ~~Rules and Regulations,~~ and any applicable federal regulations.

All reviews, analyses, evaluations, inspections, determinations and other actions by ~~VHDA~~ *the authority* pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of ~~VHDA~~ *the authority* , and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of ~~VHDA~~ *the authority* or the grantee under the agreements and documents executed in connection with a rental rehabilitation grant.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of ~~VHDA's~~ *the authority's* requirements and are not intended to include all actions involved or required in the administration of grants under the Virginia Rental Rehabilitation Program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by ~~VHDA~~ *the authority* and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by ~~VHDA~~ *the authority* from time to time with respect to the Virginia Rental Rehabilitation Program.

§ 3. Program eligibility.

A. Eligible localities.

~~VHDA~~ *The authority* will accept applications for rental rehabilitation grants from any city, town or county determined by HUD to be eligible for participation in the Virginia Rental Rehabilitation Program. ~~VHDA~~ *The authority* will maintain a current listing of eligible local governments.

B. Eligible neighborhoods.

Applicants must document that each neighborhood in which rental rehabilitation grants are used meets the following two conditions:

1. Neighborhood income level.The median household income in the neighborhood must be at or below 80% of the median income for the Metropolitan Statistical Area (MSA) in which it is located, or, in the case of a neighborhood not within a MSA, at or below 80% of the median income for the state's nonmetropolitan areas.

2. Rent stability/affordability. Rents in the neighborhood must be stable and generally affordable to lower income persons. An applicant must document rent stability/affordablity in one of the following three ways:

a. Rent trends. An applicant may document that, according to the U. S. Census, the increase in average contract rent in the neighborhood between 1970 and 1980 was equal to or less than the increase in average contract rent in the housing market area;

b. Current rent survey. An applicant may survey current neighborhood rents to document that rents are generally at or below the Section 8 Fair Market Rent limits for existing housing; or

c. Other evidence. An applicant may document that, according to the 1980 U. S. Census, the median gross rent in the neighborhood was at or below the Section 8 Fair Market Rent limit for an existing two-bedroom unit that was applicable for the housing market area in April, 1980, and provide some type of evidence that the neighborhood housing market has been stable since 1980 (e.g., assessed property values or building permit activity have not increased more rapidly than in the housing market area as a whole).

C. Eligible projects.

Rental rehabilitation grants may only be used to rehabilitate projects meeting the requirements of 24 CFR 511.10(c).

§ 4. Allocation of funds.

A. Types of allocations.

~~VHDA~~ *The authority* will accept the following two types of applications from eligible local governments for rental rehabilitation grants:

1. General allocations. ~~VHDA~~ *The authority* will make allocations of funds to local governments on a first-come, first-served basis for use in carrying out locally-designed rental rehabilitation programs. The following conditions will apply:

a. Each local allocation will be limited to a specific dollar amount.

b. Once a local government has committed 80% of its funds to specific projects, it will be eligible to apply for an additional general allocation.

c. An initial allocation to a grantee will expire 12 months after the date ~~VHDA~~ *the authority* enters into a grant agreement with the grantee with respect to such allocation; provided, however, that ~~VHDA~~ *the authority* may, in its discretion, extend the term of an allocation one or more times for a period not to exceed 12 months for each such extension.

d. Upon the expiration of an allocation, any uncommitted grant funds will be recaptured.

e. ~~VHDA~~ *The authority* will reserve the right to recapture monies from an additional general allocation prior to its expiration, if necessary, due to poor local performance and the need to commit state program funds in a timely manner.

2. Funding for specific projects. ~~VHDA~~ *The authority* will fund, on a first-come, first-served basis, applications submitted by eligible local governments for specific projects. The following conditions will apply:

a. Total funding, including any prior general or project allocations, will be limited to a specific dollar amount.

b. A locality with an uncommitted general allocation will be expected to commit these funds to the project prior to requesting additional monies.

The funding limit for specific projects will be lifted only in the event that state grant monies are not being committed in a timely manner.

B. Application procedures.

~~VHDA~~ *The authority* shall, from time to time, give notice of funds availability to eligible units of local government throughout the Commonwealth. Such notice will may include the applicable funding limits and a timetable for the submission and review of applications for each type of funds allocation.

Specific application requirements and review procedures will be provided in application packets and through such workshops/training sessions as ~~VHDA~~ *the authority* deems appropriate. Applications for grant funds will be expected to include the followng types of information:

1. General allocations. Applications for general allocations will include an identification and description of program neighborhoods; the locality's method of identifying and selecting projects; a description of local program operating procedures; a description of steps to be taken to ensure adequate

maintenance and operation of projects receiving rental rehabilitation funds; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the anticipated form of assistance to be provided to property owners and the means by which the amount of assistance will be determined; an indication of the anticipated source of matching funds; a description of any assistance to be provided to property owners in obtaining matching funds; an affirmative marketing plan (see § 5.I.2.); an agreement to comply with all federal and state program requirements; and other information as requested by ~~VHDA~~ *the authority* in the application packet.

2. Funding for specific projects. An application for funding for a specific project will include information concerning the project's conformance with neighborhood standards'; a description of local program operating procedures; a description of steps to be taken to ensure adequate project maintenance and operation; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the project's financing package; an affirmative marketing plan; information concerning expected displacement/relocation of lower income persons; an agreement to comply with all federal and state program requirements; and other information as requested by ~~VHDA~~ *the authority* in the application packet.

3. Requests for increases in allocations. After receiving an allocation of funds under the Virginia Rental Rehabilitation Program, a grantee may request an increase in such allocation by applying therefor on such form or forms as ~~VHDA~~ *the authority* shall provide.

C. Grant agreement.

Upon the approval of an application for funding, ~~VHDA~~ *the authority* will enter into a grant agreement with the local government stating the terms and conditions under which funds will be provided.

§ 5. Program requirements.

A. Lower income benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to benefit lower income families in accordance with 24 CFR 511.10(a)(4). This benefit standard must be maintained by each grantee in its program at all times unless waived by ~~VHDA~~ *the authority* . A waiver will only be approved when such a waiver will not prevent ~~VHDA~~ *the authority* from achieving an overall 70% benefit standard in the Virginia Rental Rehabilitation Program.

B. Family benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to rehabilitate units containing two or more bedrooms in accordance with 24 CFR 511.10(k). This standard must be maintained by each grantee in its program at all times unless waived by ~~VHDA~~ *the authority* . A waiver will only be approved when such a waiver will not prevent ~~VHDA~~ *the authority* from achieving an overall 70% standard in the Virginia Rental Rehabilitation Program, except in cases where ~~VHDA~~ *the authority* has applied for and received from HUD a special waiver form the 70% standard.

C. Funding priorities.

Each grantee must include the following priorities in its method for selecting projects to receive rental rehabilitation funds.

1. Units occupied by very low income families. Each grantee must give funding priority to projects which contain substandard units which, prior to rehabilitation, are occupied by very low income families. This priority may include unoccupied units if:

a. The units could be expected to be occupied by very low income families but for the units' substandard condition; and

b. The grantee agrees to assign Section 8 certificates and/or vouchers for at least 70% of the rehabilitated units in order to enable it to be occupied by very low income families.

2. Efficient use of grant funds. Each grantee must give funding priority to projects which require a minimum percentage of rental rehabilitation grant subsidy.

Proposed projects meeting these priorities, which are financially feasible and which meet all other program requirements, must be selected for funding prior to projects which do not meet the priorities. In cases where these priorities conflict, the first priority must be given precedence by grantees.

D. Adequate maintenance and operation of rehabilitated units.

Each grantee must adopt one or more of the following measures to ensure adequate maintenance and operation of projects receiving rental rehabilitation funds:

1. Establishment of minimum equity requirements for investors;

2. Assignment of priority to projects in which private investors and lenders are taking a long-term financial risk in project success;

3. Restriction of funding to investors with a satisfactory record of maintaining and operating rental

housing (the applicant must have standards and procedures for assessing an investor's record); or

4. Establishment of other reasonable standards and/or procedures for ensuring adequate maintenance and operation of rehabilitated units.

E. Project funding limits.

Each grantee must comply with the maximum project funding limits set by 24 CFR 511.10(e).

~~VHDA~~ *The authority* will seek a waiver from HUD of the $5,000 average per unit funding limit for a specific project at the request of a grantee if the grantee can document a need for such a waiver in accordance with 24 CFR 511.10(e)(2).

F. Minimum level of rehabilitation.

A grantee may establish a minimum level of rehabilitation to be required for participation in its rental rehabilitation program in excess of that established in 24 CFR 511.10(f).

G. Eligible rehabilitation costs.

A grantee may use a rental rehabilitation grant only to cover costs permitted under 24 CFR 511.10(g). No more than 20% of the rental rehabilitation funds assigned to a project may be used to make relocation payments to tenants who are displaced by rehabilitation activity.

H. Displacement and tenant assistance.

A grantee must provide any lower income family displaced from a project assisted by a rental rehabilitation grant with financial and advisory assistance as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601. A family will be determined to be displaced in accordance with the definitions contained in 24 CFR 511.10(h)(1). No tenant will be considered displaced if the tenant has been offered a decent, safe and sanitary dwellng unit in the project at an affordable rent.

I. Affirmative marketing.

Each grantee must ensure the affirmative marketing of units in rehabilitated projects for a period of seven years beginning on the date on which all the units in a projects are completed, in accordance with 24 CFR 511.10(1)(2). "Affirmative Marketing" is defined as adherence to federal, state and local fair housing laws, and positive efforts to ensure that persons of similar income levels in the same housing market area are made aware of a housing project and its benefits regardless of race, creed, religion, national origin, sex or handicap. All fair housing laws must be scrupulously observed by those who participate in the Virginia Rental Rehabilitation Program. Failure to comply with affirmative marketing requirements will subject the grantee and/or property owner to sanctions.

In order to meet its affirmative marketing responsibilities, each grantee must comply with, or ensure property owner compliance with, the following requirements and procedures:

1. General requirement. In conjunction with the marketing of all rehabilitated units, except for units occupied by families receiving Section 8 certificates or vouchers, the following five specific requirements must be met:

a. All advertising, brochures, leaflets and other printed material must include the Equal Housing Opportunity logo and the slogan or statement, and all advertisng depicting persons must depict persons of majority and minority groups, including both sexes;

b. The Equal Housing Opportunity slogan, "Equal Housing Opportunity", utilized in the newspaper classified advertisements should be at least eight (8) point boldface type, and display advertising must include the Equal Housing logo and slogan;

c. If other logotypes are used in the advertisement, then the Equal Opportunity logotype should be of a size equal to the largest of other logotypes;

d. All signs, off-site and on-site, must prominently display the logo and slogan, or the statement in a size that would not be smaller than the largest letters used on the sign; and

e. The logo and slogan, or the statement and the HUD Equal Housing Opportunity Poster (HUD Form 928.1 dated 7-75), must be prominently displayed in the on-site office or wherever applications are being taken.

2. Affirmative marketing plan. Any local government making application to ~~VHDA~~ *the authority* for a rental rehabilitation grant must submit as part of its application, on a form supplied by ~~VHDA~~ *the authroity* , a local affirmative marketing plan covering the leasing of all rehabilitated units, except for those occupied by families receiving Section 8 certificates or vouchers. Such plan must include the following information for each neighborhood in which the local government proposes to operate a rental rehabilitation program:

a. An identification of the predominant racial/ethnic composition of the neighborhood;

b. An identification of the group(s) in the housing market area that are least likely to apply for housing in the neighborhood because of its location and other factors without special outreach efforts;

c. An identification of the types of advertising and outreach procedures (e.g., use of community contacts) which participating property owners may use to meet their affirmative marketing responsibilities;

d. A description of the information to be provided to participating property owners, their staff or managing agents to enable them to carry out their affirmative marketing and fair housing responsibilities; and

e. The anticipated results of the local affirmative marketing plan (i.e., the percent of vacancies expected to be filled by the identified target group(s)).

3. Affirmative marketing agreements. Any property owner applying for rental rehabilitation funds from a grantee must submit to such grantee a description of its proposed affirmative marketing procedures which must conform with the grantee's affirmative marketing plan. This description must be in a form prescribed by the grantee, and must include the form(s) of advertising and community contacts to be used by the owner or the owner's managing agent in publicizing all vacancies, except for units rented to families receiving Section 8 certificates or vouchers, in order to attract the group(s) identified by the grantee as being least likely to apply.

Upon approval of proposed efforts, owners must enter into a compliance agreement with the grantee which must include:

a. An agreement to comply with federal, state and local fair housing law;

b. An agreement to carry out specified affirmative marketing procedures;

c. An agreement to maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing efforts in a form specified by the grantee;

d. An agreement to report such information to the grantee on an annual basis; and

e. Sanctions to be imposed by the grantee in the event of noncompliance by the property owner.

Such agreement must be effective for a period of seven years beginning on the date on which the rehabilitation of the units in the projects is completed.

4. Grantee requirements. Each grantee shall be responsible for:

a. Informing property owners' staff and owners' managing agents of their responsibility to comply with federal, state and local fair housing laws;

b. Informing property owners of the affirmative marketing requirements of the Virginia Rental Rehabilitation Program, as well as the provisions of the grantee's affirmative marketing plan;

c. Reviewing and approving affirmative marketing procedures proposed by property owners;

d. Entering into legally binding affirmative marketing agreements with property owners;

e. Monitoring compliance by property owners with affirmative marketing agreements and imposing prescribed sanctions as necessary; and

f. Collecting, and reporting to ~~VHDA~~ *the authority* on an annual basis, information regarding the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, information on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting property owner compliance with affirmative marketing requirements (e.g., records of all advertisements, notices and marketing information).

J. Use of minority and women's business enterprises. Each grantee must encourage the use of minority and women's business enterprises in connection with activities funded with rental rehabilitation grant monies in accordance with 24 CFR 511.10(m)(1)(v). Such efforts must include the following activities.

1. Targets. Upon entering into a grant agreement with ~~VHDA~~ *the authority* , each grantee must establish local dollar or other measurable targets based on factors that the grantee regards as appropriate and related to the purpose of its rental rehabilitation program. A copy of such targets must be forwarded to ~~VHDA~~ *the authority* prior to the drawing down of any grant funds.

2. List of businesses. Upon entering into a grant agreement with ~~VHDA~~ *the authority* , each grantee must prepare a list of minority and women's business

enterprises which are potential suppliers or rehabilitation services and materials to property owners receiving grant assistance. A grantee should make use of the services of the Virginia Office of Minority Business Enterprise and appropriate federal agencies, as needed, in preparing such a list. Each grantee must forward a copy of the list to ~~VHDA~~ *the authority* prior to drawing down any grant funds.

3. Bid solicitation. Each grantee must make reasonable efforts to include qualified minority and women's business enterprises on bid solicitation lists and to ensure that such businesses are solicited whenever they are potential sources of services and materials.

4. Negotiated contracts. Whenever competitive bidding is not required of a property owner, the grantee must provide the property owner with a list of minority and women's business enterprises which are potential sources of services or materials.

5. Subcontracts. Each grantee must ensure that property owners require that all subcontractors be provided with a list of minority and women's business which are potential suppliers of materials or services.

6. Records. Each grantee must keep records of the number and dollar amount of participation by minority and women's business enterprises, including subcontractors and owners of rental properties, in connection with activities funded with rental rehabilitation grant monies.

K. Use of local area and minority contractors, suppliers and employees.

Each grantee must encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies in accordance with 24 CFR 511.10(m)(1)(v). Such activities must include the development of a plan that includes the following elements:

1. Area definition. The plan must include a definition of the local area in which residents and businesses are the intended beneficiaries of rental rehabilitation activities (usually the applicant locality or, in the case of a town or small city, the locality plus the adjacent county).

2. Procedures. The plan must include procedures to be followed to encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies.

A copy of this plan (such federally required plans are often referred to as "Section 3 Plans") must be forwarded to ~~VHDA~~ *the authority* prior to the drawing down of any grant funds.

L. Architectural barriers to the handicapped.

Each grantee must ensure that, in the case of projects involving the rehabilitation of 25 or more units where the cost of rehabilitation is greater than or equal to 75% of the value of the project after rehabilitation, the owner improves any unit occupied by a handicapped person prior to rehabilitation in a manner which removes architectural barriers in accordance with the requirements of 24 CFR 511.10(m)(1)(ii).

M. Age discrimination in employment.

Each grantee must ensure that property owners do not discriminate against employees based on age, nor that property owners use contractors who so discriminate, in accordance with 24 CFR 511.10(m)(1)(ii).

N. Labor standards.

Each grantee must ensure that all laborers and mechanics, except laborers and mechanics employed by a local government acting as the principal contractor on the project, employed in the rehabilitation of a project receiving rental rehabilitation grant assistance that contains 12 or more units, are paid at the prevailing wage rates set under the Davis Bacon Act, 40 USC 276a, and that contracts involving their employment are subject to the provisions of the Contract Work Hours and Safety Standards Act, 40 USC 327, in accordance with the requirements of 24 CFR 511.11(a).

O. Environmental and historic reviews.

Each grantee must comply with the environmental and historic review requirements contained in 24 CFR Part 58. Grantees must submit requests for release of funds to ~~VHDA~~ *the authority* for review. VHDA will forward its recommendation, together with the request, the environmental certification and the objections, to HUD. All approvals for release of funds will be made by HUD.

P. Conflicts of interest.

Each grantee must comply with the conflict of interest requirements contained in 24 CFR 511.11(e).

Q. Lead-based paint.

Each grantee must ensure that any property owner receiving rental rehabilitation grant assistance takes steps to remove the hazards of lead-based paint in accordance with the requirements of 24 CFR Part 35.

R. Use of debarred, suspended or ineligible contractors.

Each grantee must comply with the requirements of 24 CFR Part 24 in the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors with rental rehabilitation grant funds.

S. Legal agreement with property owner.

Each grantee must execute an agreement with the owner of a property receiving rental rehabilitation assistance, including a cooperative or mutual housing association, under which the owner:

1. Agrees, for a period of at least 10 years beginning on the date on which the rehabilitation of the units in the project is completed, not to:

a. Discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program;

b. Discriminate against prospective tenants on the basis that the tenants have a minor child or children who will be residing with them, except for housing projects for elderly persons; and

c. Convert the units to condominium ownership or any form of ineligible cooperative ownership.

2. Agrees, for a period of seven years beginning on the date on which the rehabilitation of the units in the project is completed, to:

a. Comply with federal, state or local fair housing laws;

b. Carry out specified affirmative marketing procedures; and

c. Maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing efforts in a form specified by the grantee, and to report such information to the grantee on an annual basis (see § 5 I 3).

Such agreement must contain sanctions to be imposed by the grantee in the event of noncompliance by the property owner. Guidelines are contained in 24 CFR 511.10(i) and (j).

§ 6. Grant administration.

A. Responsibility for grant administration.

Grantees are responsible for ensuring that rental rehabilitation grants are administered in accordance with the requirements of these ~~procedures, instructions and guidelines~~ *rules and regulations* , all applicable sections of 24 CFR Part 511 and other applicable state and federal laws.

B. Records to be maintained.

Each grantee must maintain records specified by ~~VHDA~~ *the authority* that clearly document its performance under each requirement of these ~~procedures, instructions and guidelines~~ *rules and regulations* . Required records must be retained for a period of three years from the date of final close-out of the rental rehabilitation grant. Public disclosure of records and documents must comply with the requirements of 24 CFR 511.72.

C. Grant management and audit.

Each grantee must comply with the policies, guidelines and requirements of 24 CFR 511.11(c) in the acceptance and use of rental rehabilitation grant funds. Access to grantee records and files must be provided in accordance with the requirements of 24 CFR 511.73. The financial management systems used by grantees must conform to the requirements of 24 CFR 511.74.

D. Disbursement of funds/cash management systems.

Grant monies will be disbursed to grantees for payment of eligible program costs in accordance with the following procedures:

1. Project accounts. Grantees must identify to ~~VHDA~~ *the authority* each project for which they wish to provide rental rehabilitation funds and the amount of grant monies to be committed to each project. Upon receipt of all necessary project information, ~~VHDA~~ *the authority* will establish a project account with HUD.

2. Disbursement of funds. Grant monies will be disbursed on a project-by-project basis by electronic funds transfer to a designated depository institution in accordance with HUD procedures and guidelines. ~~VHDA~~ *The authority* will designate a depository institution and make all requests to HUD for funds transfer, unless such authority is formally delegated to a grantee by ~~VHDA~~ *the authority* . Grantees will notify ~~VHDA~~ *the authority* of the need for grant funds to pay eligible rehabilitation costs. ~~VHDA~~ *the authority* will in turn request HUD to transfer funds to ~~VHDA~~ *the authority* . Upon receipt of such monies, ~~VHDA~~ *the authority* will disburse grant funds to the grantee or, at ~~VHDA's~~ *the authority's* option, ~~VHDA~~ *the authority* may, prior to receiving the grant funds requested from HUD, disburse to the grantee its own funds in an amount equal to such requested grant funds and reimburse itself with the HUD funds upon receipt thereof.

3. Conditions for requesting draw-downs of funds. Grantees must not request draw-downs of funds until such funds are actually needed for payment of eligible costs. A request for funds for payment of a contractor

may only be made after the work has been inspected and found to be satisfactory. Grant funds must be drawn down at no greater proportion than the amount of rental rehabilitation funds in the project. For example, if on a $10,000 rehabilitation project, $5,000 of rental rehabilitation grant funds were provided and the construction was 50% complete, no more than $2,500 in rental rehabilitation grant funds could be drawn down for the project. Disbursement of any grant funds is conditioned on the submission of satisfactory information by the grantee about the project and compliance with other procedures established by ~~VHDA~~ *the authority* and HUD.

§ 7. Allocation and administration of § 8 certificates and vouchers.

A. Allocation of rental assistance.

Subject to the availability (as determined by HUD) of contract and budget authority for certificates or vouchers under Section 8, VHDA will assign contract authority for up to one voucher or certificate for use in the Virginia Rental Rehabilitation Program for each $5,000 of rental rehabilitation grant monies allocated to a grantee. Such rental assistance must be used in accordance with 24 CFR 511.41(a) and other governing HUD rules, regulations, procedures and requirements.

B. Administration of rental assistance.

~~VHDA~~ *The authority* will enter into Annual Contributions Contracts with HUD to administer contract authority for Section 8 certificates or vouchers allocated to Virginia for use in the Virginia Rental Rehabilitation Program. ~~VHDA~~ *The authority* will administer such contract authority in accordance with the applicable ~~VHDA Procedures, Instructions and Guidelines~~ *rules and regulations of the authority* .

§ 8. Annual performance review.

A. Performance elements.

~~VHDA~~ *The authority* uwill review the performance of all grantees in carrying out their responsibilities under these ~~procedures, instructions and guidelines~~ *rules and regulations* and under all the applicable requirements of 24 CFR Part 511 at least annually. These reviews will analyze whether the grantee has:

1. Carried out its activities in a timely manner, including the commitment of rental rehabilitation grant funds to specific projects;

2. Has carried out its activities in accordance with all state and federal requirements; and

3. Has a continuing capacity to carry out its activities in a timely manner.

B. Grantee reports to ~~VHDA~~ *the authority* .

Each grantee must submit the following reports to ~~VHDA~~ *the authority* at such times and such formats as ~~VHDA~~ *the authority* may prescribe:

1. Management reports. Each grantee must submit reports to ~~VHDA~~ *the authority* on the management of its rental rehabilitation grant as requested by ~~VHDA~~ *the authority* .

2. Annual performance report. Each grantee must submit an annual performance report to ~~VHDA~~ *the authority* at such times as ~~VHDA~~ *the authority* may prescribe. This report must contain such information and be in such form as prescribed by ~~VHDA~~ *the authority* , and will include at least the elements prescribed in 24 CFR 511.81(2).

C. Remedial actions and sanctions.

In the event of failure by a grantee to carry out its responsibilities in administering its rental rehabilitation grant, ~~VHDA~~ *the authority* will seek remedial actions on the part of the grantee and, if necessary, impose sanctions including the recapture of uncommitted rental rehabilitation grant funds and barring the local government from future participation in the Virginia Rental Rehabilitation Program.

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Title of Regulation: **VR 400-02-0009. Rules and Regulations For Virginia Homesteading Program (Formerly: Procedures, Instructions and Guidelines for Virginia Homesteading Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information).

VR 400-02-0009. Rules and Regulations for Virginia Homesteading Program.

§ 1. Definitions.

The following words and terms, when used herein, shall have the following meaning, unless the context indicates otherwise.

~~*"Executive Director"* means the Executive Director of VHDA or any other officer or employee of VHDA who is authorized to act on behalf of VHDA pursuant to a resolution of the Board of Commissioners.~~

"FmHA" means the Farmer's Home Administration of the U. S. Department of Agriculture.

"HUD" means the U. S. Department of Housing and

Urban Development.

"Locality" means any unit of local government in which a Virginia Homesteading Program is implemented.

"PHA" means any state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing.

~~"VHDA" means the Virginia Housing Development Authority.~~

"VA" means the Veterans' Administration.

These definitions supplement those contained in 24 CFR Part 590.5 and other applicable sections of the Code of Federal Regulations. Only those terms not defined in the ~~Federal~~ Code *of Federal Regulations* or used differently herein have been defined.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* are applicable to all program activities carried out by ~~VHDA~~ *the authority* with funds provided by HUD or other source for the purpose of carrying out the Virginia Homesteading Program (herein referred to as "the program") for the benefit of lower-income families and persons.

These ~~procedures, instructions and guidelines~~ *rules and regulations* supplement and clarify rather than supercede the requirements of the federal Urban Homesteading Program as described in 24 CFR Part 590. ~~VHDA~~ *The authority* is fully bound by all applicable requirements of 24 CFR Part 590, as well as governing federal and state laws in the administration or use of funds received from HUD under the federal Urban Homesteading Program.

Properties will be acquired and construction loans may be made pursuant to these rules and regulations only if and to the extent that the authority has received or expects to receive section 810 funds from HUD for such acquisition and has made or expects to make loan funds available for the making of such construction loans.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any homesteading project to waive or modify any provisions herein where deemed appropriate by him for a good cause, to the extent not inconsistent with ~~VHDA's~~ *the* Act, *these* rules and regulations, and any applicable federal laws and regulations.

All reviews, analyses, evaluations, inspections, determinations, and other actions by ~~VHDA~~ *the authority* pursuant to the provisions of these ~~procedures, instructions, and guidelines~~ *rules and regulations* , shall be made for the sole and exclusive benefit and protection of ~~VHDA~~ *the authority* , and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of ~~VHDA~~ *the authority* or program participants under the agreements and documents executed in connection with the program.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of this program and are not intended to include all actions involved or required in the administration of funds under the program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by ~~VHDA~~ *the authority* and may be supplemented by policies, ~~procedures, instructions, and guidelines~~ *rules and regulations* adopted by ~~VHDA~~ *the authority* from time to time with respect to the program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are adopted ~~under Rules 103 and Part V of VHDA's Rules and Regulations adopted on January 17, 1984,~~ pursuant to § 36-55.30:3 of the Code of Virginia. ~~The effective date of these procedures, instructions and guidelines is January 15, 1985.~~

§ 3. General program description.

Under the program ~~VHDA~~ , *the authority* will acquire foreclosed properties from the FmHA, HUD, and VA. ~~VHDA~~ *The authority* may also utilize properties from its own inventory of foreclosures or may acquire units which are owned by local governments. The acquisition of these properties will be financed using Section 810 Funds supplied by HUD. The emphasis will be on properties located in rural areas and in small towns. These properties will be acquired in groups which are concentrated geographically, preferably within the same subdivision or neighborhood. The properties will also be properties which are in need of a significant amount of rehabilitation in order to bring them into compliance with ~~VHDA~~ *the authority* , FmHA, and the statewide building code requirements.

A pool of eligible applicants from within the locality and surrounding area will be developed, with a priority being given to lower-income families. In the case where the demand from eligible families exceeds the supply of properties available, applicants for specific properties will be selected on the basis of a lottery. Upon sale of the property to an applicant for the price of $1.00, the applicant becomes a homesteader. The homesteader will be required to rehabilitate the property in accordance with a work plan developed by ~~VHDA~~ *the authority* .

~~VHDA~~ *The authority* will provide a temporary construction-period loan to the homesteader to cover the cost of rehabilitation. Permanent financing will be provided primarily by the FmHA. Other sources of permanent financing may also be used, including ~~VHDA~~ *the authority* , FHA, Section 312 of the Housing Act of 1964, as amended, loan programs operated by the locality or local PHA, and conventional sources of financing.

Title to the property is not conveyed to the homesteader at the time of purchase. Instead, ~~VHDA~~ *the authority* will sell the property by means of an installment sales contract, which has a five-year term, during which time ~~VHDA~~ *the authority* retains title to the property. Over the five-year period, ~~VHDA~~ *the authority* will monitor the homesteader and the property to assure that certain program requirements are met. These are as follows:

~~A.~~ *1.* The homesteader must complete the rehabilitation of the property in accordance with the ~~VHDA~~ work plan *approved by the authority* and within the period of time prescribed by ~~VHDA~~ *the authority* ;

~~B.~~ *2.* The homesteader must maintain the property in good condition;

~~C.~~ *3.* The homesteader must keep payments for any financing on the property current;

~~D.~~ *4.* The homesteader may not sell or rent the property;

~~E.~~ *5.* The homesteader must continue to occupy the property as his principal residence; and

~~F.~~ *6.* The homesteader must permit inspections of the property at reasonable times by employees or designated agents of ~~VHDA~~ *the authority* .

Upon satisfactorily completing five years of occupancy, ~~VHDA~~ *the authority* will provide the homesteader with a deed to the property and will terminate its monitoring function.

The purpose of the program is two-fold. First, the program will provide homeownership opportunities to lower-income families in rural areas who have relatively few housing options, particularly with respect to homeownership. Secondly, the program will address the problem of vacant and deteriorating properties and the impact which they have on neighborhood viability. Often, these types of properties contribute to the decline of neighborhoods by creating a cycle where other homeowners feel they have no incentive to maintain their own properties due to declining values in the area which are caused primarily by the vacant and deteriorating houses. By rehabilitating these problem properties and placing stable families in them, it is possible to stabilize or reverse negative trends in the entire neighborhood.

§ 4. Program eligibility.

A. Eligible localities.

~~VHDA~~ *The authority* may operate the program within any jurisdiction in the state which does not currently operate its own program. Priority shall be given to those areas of the state which are eligible for participation in FmHA programs.

B. Eligible neighborhoods.

Any neighborhood shall be eligible for participation in the program, provided that it is located in an eligible jurisdiction and contains vacant and eligible housing units.

C. Eligible properties.

Any single-family house (including single-family detached, townhouse, or condominium) which meets the following conditions is eligible for acquisition under the program:

1. Foreclosed properties which are being held in the inventories of FmHA, HUD, VA, ~~VHDA~~ *the authority* , local PHA's or other agencies of federal, state, or local government, as well as properties which have been acquired by units of local government as a result of tax delinquency or other actions are eligible.

2. The house must be in need of rehabilitation which is substantial in nature and cost. The intent of the program is to select houses which require the correction of serious deficiencies in one or more of the functional systems of the house. These include structural, electrical, plumbing, heating/cooling, and roofing. In order to be eligible, the house must evidence a serious defect in at least one of these major housing component systems. The one exception to this would be the case of a house which exhibits a significant amount of deferred maintenance in a number of areas. If considered individually, these improvements would not be viewed as substantial rehabilitation, but when taken as a whole, they do constitute a substantial rehabilitation of the housing unit.

There is no cost threshold with respect to the level of rehabilitation required; however, in most cases it is expected that rehabilitation costs will, at a minimum, exceed 25% of the after-rehabilitation value of the property.

D. Eligibility of improvements.

Most general types of property improvements will be eligible under this program. As noted above, cosmetic improvements are eligible when undertaken in conjunction with improvements of a more substantial nature. Cosmetic improvements alone will not be allowed under any circumstances. In addition, luxury type improvements (i.e., swimming pools) will not be allowed.

Upon completion, the house must meet or exceed all FmHA standards with respect to property rehabilitation, including thermal performance standards, all ~~VHDA~~ *of the authority's* requirements with respect to substantial rehabilitation, as well as the statewide and local building code requirements.

There will be an emphasis placed upon improvements to

the property which have an impact on the exterior appearance of the house and the entire subdivision. These would include improvements such as exterior painting, adding additional trimwork to the exterior (i.e., shutters), porches, carports, garages, yard landscaping (i.e., lawn seeding, shrubs, trees), improvements to driveways, improvements to drainage structures, fencing, etc. These types of improvements will be included in individual loans only to the extent that they are located entirely on the subject property.

~~VHDA~~ *The authority* will endeavor to work with the local government, as well as other federal and state agencies to encourage other public improvements which would benefit the neighborhood as a whole. These would include activities such as street, water, sewer, recreational, and other types of improvements. Further, ~~VHDA~~ *the authority* will endeavor to work with appropriate units of local government and other agencies in order to improve both governmental and private services which are available to the residents of the neighborhood (i.e., local transportation service, increased law enforcement patrol activity, housing counseling).

E. Eligibility of applicants.

The eligibility of families and persons under this program shall be limited to those households with incomes less than 80% of the median for the jurisdiction in which the housing is located. ~~VHDA~~ *The authority may* , in conjunction with the unit of local government, ~~may~~ establish priorities within this group. These priorities shall include the federal requirement to give special consideration to the applicant's need for housing and his ability to make, or cause to be made, the required property improvements.

In cases where the permanent mortgage financing available on the completed houses will be limited to certain programs (i.e., FmHA Section 502 and HUD 312 programs), then applicants would be prescreened to select those persons and families who meet the threshold criteria for those programs.

§ 5. Application and processing.

A. Selection of units.

From time to time, ~~VHDA~~ *the authority* will request the FmHA, HUD, VA, or other agencies to supply a list of properties currently in their inventory of foreclosed housing units. From this list, ~~VHDA~~ *the authority* will determine if there are concentrations of properties which are suitable for the implementation of the program. This determination will be made on the basis of physical examination of the properties and the neighborhoods and will include an evaluation of the selection criteria mentioned above, including the geographical proximity of the units, the number of units available, the condition of the units and required level of rehabilitation, evaluation of the local market for the units, and evaluation of the ability of the local government to contribute to community improvements and increased services.

As soon as the properties have been selected, ~~VHDA~~ *the authority* will notify the appropriate agency and request that no sales contracts be taken for those units until such time as acquisition can be arranged utilizing Section 810 Funds from HUD.

B. Marketing.

As soon as eligible properties have been selected and the agencies which own the properties have agreed to reserve them for use under the program, ~~VHDA~~ *the authority* will undertake a marketing effort in the locality in which the units are located. These activities may include newspaper advertising and public notices, public meetings, coordination with the local PHA, outreach to local housing groups, civic organizations, churches, etc.

Applications will be accepted for a specified period of time. The length of this application period will be determined by local conditions, including the number of properties and the size of the local market. Initial screening of applicants will then take place to determine which persons and families meet the threshold criteria for the program. After that, the applications will be prioritized according to the standards mutually agreed to by ~~VHDA~~ *the authority* and the unit of local government, as well as those which are federally mandated.

C. Lottery.

If the prequalified applicants exceed the number of properties available, all of these applicants will participate in a lottery to determine who will have the first opportunity to purchase one of the properties. A drawing will be held for each property with applicants able to submit their names to be considered for any or all of the properties. Any applicants who are selected for more than one of the properties would be required to choose which of the properties would be their first choice.

D. Application preparation.

For each property, approximately five names will be selected in the lottery. Then, beginning with the first, ~~VHDA~~ *the authority* staff will prepare a FmHA (or other applicable lending institution) mortgage loan application. This application will be submitted to FmHA along with a copy of the rehabilitation plans and specifications. If, during the process of preparing the application, the applicant is found to be ineligible or if the application is rejected by FmHA, then the process would be repeated with the ~~second~~ *next* person or family on the lottery selection list *until an applicant is determined to be eligible and acceptable to FmHA* .

E. Rehabilitation contract.

As soon as the permanent mortgage loan application has

been approved, ~~VHDA~~ staff *of the authority* will, with the concurrence of the homesteader, put the rehabilitation contract out for bid, or negotiate with a local rehabilitation contractor. The lowest responsible bidder will be awarded the contract. Rehabilitation contractors will be subject to an investigation by ~~VHDA~~ *the authority* in order to determine their competence to perform the work.

The contract for rehabilitation will run between the homesteader and the contractor. ~~VHDA~~ *The authority* will not be a party to this contract. ~~VHDA~~ *The authority* will, however, act as a technical adviser to the homesteader in the preparation of the work plan, selection of the contractor, inspection of the property during the construction, disbursement of construction funds, and final inspection after completion.

F. Loan closing.

Once an acceptable rehabilitation contract has been obtained through bid or negotiation, the property will go to loan closing. At loan closing, the homesteader will sign the installment sales contract with ~~VHDA~~ *the authority* , a homesteading agreement with ~~VHDA~~ *the authority* and a construction loan note and agreement with ~~VHDA~~ *the authority* . The homesteader will also execute the rehabilitation contract with the contractor selected.

The ~~VHDA~~ *authority's* construction loan is provided for a term not to exceed 180 days and at an interest rate to be determined by the executive director. The amount of the construction loan shall not exceed the amount of the permanent mortgage loan commitment and shall include the cost of rehabilitation and any associated soft costs, including a pro rata share of ~~VHDA's~~ *the authority's* administrative expenses incurred in the implementation of the program.

G. Rehabilitation construction.

Rehabilitation construction shall commence within 30 days of loan closing. ~~VHDA~~ *The authority* shall monitor the rehabilitation construction and authorize all disbursements made to the contractor during the rehabilitation period, including the final disbursement upon completion. Such disbursements shall not exceed the value of the work in place, less a 10% retainage. The homesteader shall be required to sign off on all inspections and disbursements. Upon completion, ~~VHDA~~ *the authority* shall request inspection of the property by FmHA or other applicable permanent mortgage lender. Upon approval by the permanent mortgage lender, final disbursement shall be made to the contractor, including retainage. The permanent mortgage loan closing will take place shortly thereafter, at which time ~~VHDA's~~ *the authority's* construction loan will be paid off.

H. Post-occupancy monitoring.

~~VHDA~~ *The authority* shall monitor the homesteader with respect to the provisions in *subdivisions 1 through 5 of* § 3 ~~A-E~~ above for a period of five years. Upon successful completion of this period, ~~VHDA~~ *the authority* shall provide the homesteader with a deed to the property.

If the homesteader does not comply with the required provisions at any time during the five-year period, the homesteader shall receive a warning from ~~VHDA~~ *the authority* and be given a grace period during which to correct the deficiency. The length of this grace period will be dependent upon the nature of the deficiency and shall be determined by ~~VHDA~~ *the authority* for each individual case. If the deficiency is not corrected, ~~VHDA~~ *the authority* may declare the homesteader to be in default of the installment sales agreement and take back possession of the property pursuant to such agreement. In this case, the property would be made available to another applicant. If this second Homesteader also defaults in complying with the provisions required in *subdivisions 1 through 5 of* § 3 ~~A-E~~ above, ~~VHDA~~ *the authority* may dispose of the property in any manner which it determines to be appropriate.

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Title of Regulation: **VR 400-02-0010. Rules and Regulations for Mortgage Credit Certificate Program (Formerly: Procedures, Instructions and Guidelines for Mortgage Credit Certificate Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 400-02-0010. Rules and Regulations for Mortgage Credit Certificate Program.

PART I.
PURPOSE AND APPLICABILITY.

§ 1.1. Definitions.

The following words and terms, when used in these *rules and* regulations, shall have the following meaning, unless the context clearly indicates otherwise.

"Acquisition cost" means the purchase price of a mobile/manufactured or site-built home, and the cost of land and improvements, including any well or septic system, if owned for less than two years; the cost of completing any unfinished space; the cost of any fixtures not included in the purchase price; any set-up costs including transportation of a mobile/manufactured home , if not included in the purchase price; settlement or financing costs which are in excess of usual or reasonable costs and the capitalized value of any ground rent.

"Application for Commitment" means a request to the authority by an applicant for an MCC commitment on a specified loan. This request shall be made on the

Application for Commitment form.

"Authority" means the Virginia Housing Development Authority, a political subdivision of the Commonwealth of Virginia constituting a public instrumentality.

"Certified indebtedness" means the amount of indebtedness as determined by the authority incurred by the applicant to acquire a mobile/manufactured or site-built home, in accordance with federal requirements and as specified in the MCC.

"Commitment" means the obligation of the authority to provide an MCC to an eligible applicant pursuant to an approved Application for Commitment.

"Commitment fee" means the fee payable or paid by an eligible applicant to the authority in connection with an Application for Commitment.

"Commitment term" means the period of time during which the eligible applicant may obtain a loan to which the MCC applies and during which the authority is obligated to issue an MCC pursuant to a commitment.

"Eligible applicant" means any person meeting the criteria for an eligible applicant as set forth in Part II of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Executive director" means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board ~~of Commissioners~~ of the authority.

"Loan" means any extension of credit, to which an MCC applies, provided to an eligible applicant to finance the purchase of a mobile/manufactured or site-built home which meets the conditions set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Mobile/manufactured home" means any mobile/manufactured housing unit that meets the criteria set forth in Part II of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Mortgage credit certificate" or "MCC" means a certificate issued by the authority pursuant to § 25 of the Internal Revenue Code *of 1986,* as amended ~~by § 612 of the Tax Reform Act of 1984~~ .

"Mortgage credit certificate rate" means the rate specified by the authority in the MCC that determines the allowable percentage of annual loan interest payments for which the applicant is eligible to take a federal tax credit.

"Participating lender" means any person or organization legally authorized to engage in the business of making loans for the purchase of mobile/manufactured homes or for the purchase or construction of site-built homes and meeting the qualifications set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Principal residence" means that the dwelling will be occupied as the primary residence of the purchaser and will not be property held in a trade or business, or investment property, and is not a recreational or second home and that no part of the dwelling shall be used for any business purposes for which expenses may be deducted for federal income tax purposes.

"Program" means the authority's Mortgage Credit Certificate Program.

"Purchase price" means, with regard to a mobile/manufactured home, the amount paid by the applicant or any other person to or for the benefit of the seller for such mobile/manufactured home (excluding the cost of any land or personal property which is not a permanently attached fixture); with regard to a site-built home it shall mean the amount paid for such home including land and improvements.

"Qualified mortgage bond" means a tax-exempt security, as defined under § 103A of the Internal Revenue Code *of 1986, as amended* , issued by a state, certain agencies or authorities or a local government, the proceeds of which are used to provide financing for owner-occupied residential property.

"Qualified veterans bond" means a tax-exempt security, as defined under § 103A of the Internal Revenue Code *of 1986, as amended* , issued by a state or certain agencies or authorities, the proceeds of which are used to provide financing for owner-occupied residences of certain veterans of military, naval or air service.

"Site-built home" means a single family residence intended to be the principal residence of the purchaser which is permanently affixed to real property and is not a mobile/manufactured home.

§ 1.2. Purpose and applicability.

Section 25 of the Internal Revenue Code *of 1986* , as amended, authorizes states and political subdivisions to issue MCC's in lieu of qualified mortgage revenue bonds. These MCC's entitle qualifying individuals to a credit against the individual's federal income taxes. The amount of the credit is determined by multiplying the certificate credit rate by the amount of mortgage interest paid or accrued by the taxpayer during the taxpayer's taxable year. The maximum allowable credit is $2,000 per year.

The authority has elected to participate in the program and hereby sets forth its ~~procedures, instructions and guidelines~~ *rules and regulations* thereunder.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to MCC's which are to be issued by the authority to persons and families

of low and moderate income for the purpose of assisting them in the purchase of mobile/manufactured or site-built homes. ~~This program is being implemented pursuant to federal regulations found in 26 CFR, Parts 1, 6a and 602, which were published in the Federal Register on May 8, 1985.~~

MCC's may be issued to eligible persons and families pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make MCC's available therefor.

Notwithstanding anything to the contrary herein, the executive director of the authority is authorized with respect to any MCC to waive or modify any provision herein where deemed appropriate by him "for good cause" to the extent not inconsistent with ~~the Virginia Housing Development Authority Act (hereinafter "the Act"), the authority's rules and regulations and~~ federal statutes and regulations.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's requirements and processing and are not intended to include all actions involved or required in the processing and administration of MCC's. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to amendment at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to the program.

Notwithstanding anything to the contrary herein, all MCC's must comply with the applicable federal laws, rules and regulations governing the issuance of MCC's.

PART II.
ELIGIBILITY REQUIREMENTS.

§ 2.1. Eligible persons and families.

In order to be qualified as a person or family of low and moderate income eligible for an MCC, the person or family must have an annual gross family income (as defined in the authority's rules and regulations) which does not exceed those limits established from time to time ~~by the authority's Board of Commissioners~~ in the authority's ~~Procedures, Instructions and Guidelines~~ *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income ~~. Additionally, in order to be eligible to receive an MCC, an applicant must~~ *and must* , on the date the loan is made:

1. Be a purchaser who will use the mobile/manufactured or site-built home for a permanent principal residence within the Commonwealth of Virginia;

2. Possess the legal capacity to incur the obligations of the loan;

3. Agree to notify the authority if the mobile/manufactured or site-built home ceases to be the purchaser's permanent principal residence;

4. Agree not to sell or transfer the MCC; and

5. Shall not have had a present ownership interest in a principal residence at any time during the three-year period ending on the date on which the loan is executed (not applicable in targeted areas and not applicable to previous ownership of a mobile/manufactured home classified as personal property).

§ 2.2. Eligible properties.

A. General.

1. Mobile/manufactured homes which are eligible under the program are those units which are new and have not been previously occupied and which have a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which are of a kind customarily used at a fixed location and designed primarily for residential housing for one family. The dwellings must be of a type which is manufactured with a permanently affixed chassis for the purpose of transporting the dwelling to its site. All permanently attached fixtures are included as a part of the dwelling unit.

2. Site-built homes which are eligible under the program are those units that meet BOCA standards and otherwise qualify under the authority's ~~Procedures, Instructions and Guidelines~~ *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

B. Purchase price and acquisition cost limits.

The purchase price of the mobile/manufactured or site-built home may not exceed those limits established from time to time by the Board of Commissioners of the authority in the ~~Procedures, Instructions and~~ Guidelines *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income. The total acquisition cost, which includes the cost of land if owned by the applicant less than two years, may not exceed those limits established from time to time in compliance with the federal requirements.

C. Location of property.

At the time the MCC is issued or within 60 days thereafter, the property must be located and occupied within the Commonwealth of Virginia.

§ 2.3. Eligible lenders.

The authority may not limit the use of an MCC obtained under this program by an eligible applicant to loans

incurred from any particular lender. Therefore, the eligible applicant may obtain a loan from any lender engaged in the business of extending credit for the purchase of mobile/manufactured homes or the purchase or construction of site-built homes, who agrees to comply with all federal and authority MCC requirements and regulations. A loan may not be obtained from a related person, as defined in the federal regulations.

§ 2.4. Eligible loans.

A. Time of loan.

To be eligible for an MCC issued by the authority, an applicant's certified indebtedness must have been incurred during the period when the authority is permitted to offer MCC's to eligible applicants.

B. Type of loan.

MCC's will be issued only to eligible applicants who obtain loans for the purpose of financing the purchase of mobile/manufactured or site-built homes for use as the principal residences of the eligible applicants. No loan may be made to refinance an existing loan unless such loan was a bridge loan or similar temporary initial financing. No portion of the financing of the dwelling may be made from the proceeds of a qualified mortgage bond or a qualified veterans bond.

C. Interest rates and term.

The interest rate shall not exceed and the term of loans made in connection with MCC's shall not substantially vary from those that are customarily used with respect to mortgages not provided in connection with MCC's. The authority shall from time to time monitor prevailing rates and terms within the industry for the purpose of determining compliance with this section.

D. Permissible loan fees.

The lender may not, without the prior written approval of the authority, require the applicant to pay, either directly or indirectly in obtaining the loan to which the MCC is to be applied, any points, origination fees, servicing fees, application fees, insurance fees, or similar settlement or financing costs in amounts exceeding those that are customarily charged with respect to mortgages not provided in connection with MCC's.

PART III.
ALLOCATION OF CREDITS.

§ 3.1. Allocation of credits to targeted areas.

The authority will comply with all targeted area requirements as contained in federal regulations. This includes the reservation of 20% of the MCC authority for use in targeted areas for a period of one year from the date on which the MCC's are first made available. A complete listing of targeted areas is available from the authority as well as instructions regarding the procedures for the designation of new targeted areas.

§ 3.2. Discretion of authority to allocate.

Notwithstanding anything to the contrary herein, in administering the program, the executive director may impose limitations or restrictions on the allocation of MCC's in order to insure a broad geographic dispersal of MCC's throughout the Commonwealth.

PART IV.
APPLICATION AND PROCESSING.

§ 4.1. Application for and issuance of commitments.

The applicant shall submit such forms, documents and information and fees as the executive director may require in order to apply for an MCC. The executive director or his designee shall review the application and, if it is determined that the Application for Commitment complies with these ~~procedures, instructions and guidelines~~ *rules and regulations* and any applicable federal laws, rules and regulations, then the authority shall issue a commitment to the applicant with respect to such MCC, subject to the ratification thereof by the authority's board ~~of Commissioners~~ . The maximum principal amount, amortization period and interest rate on the applicant's loan and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth in the commitment. The commitment term shall be for 60 days, except that the term may be extended "for good cause" in the sole discretion of the authority.

§ 4.2. Issuance of MCC.

The closing of the loan shall be consummated in accordance with the terms of the commitment. Upon receipt of such forms, documents, information and commitment fees as the executive director may require upon closing, the authority shall issue an MCC to the applicant. The MCC shall specify the applicable mortgage credit certificate rate and the certified indebtedness amount.

§ 4.3. Compliance inspections.

The authority shall have the right from time to time to enter upon the property on which the mobile/manufactured or site-built home is located in order to determine compliance with program requirements. Any such inspection shall be made for the sole and exclusive benefit and protection of the authority.

PART V.
REVOCATION OF A MORTGAGE CREDIT CERTIFICATE.

§ 5.1. The authority may impose such sanctions or pursue

such remedies, as legally available, including revocation of a certificate holder's MCC for noncompliance with applicable regulations and requirements pursuant to federal guidelines. Such noncompliance shall include, but is not limited to, the mobile/manufactured or site-built home ceasing to be the MCC holder's principal residence. An MCC may be revoked by the authority's notification to the certificate holder and the Internal Revenue Service that the certificate is revoked.

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Title of Regulation: **VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (Formerly: Procedures, Instructions and Guidelines for Allocation of Low-Income Housing Tax Credits.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar or Events section
for additional information)

VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

§ 1. Definitions.

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

~~*"Authority"* means the Virginia Housing Development Authority.~~

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Credits" means the low-income housing tax credits as described in § 42 of the Code.

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the authority.~~

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the Code.

" *Qualified* low-income ~~housing units~~ *buildings*" means those ~~units~~ *buildings* which meet the applicable requirements in § 42 of the Code to qualify for *an allocation of* credits thereunder.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will govern the allocation by the authority of credits pursuant to § 42 of the Code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the applicant for credits, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Code.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time.

§ 3. General description.

The Code provides for credits to the owners of residential rental projects ~~providing~~ *comprised of qualified low-income buildings in which* low-income housing units *are provided, all* as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual low-income credit authority limitation for such year ~~, which is equal to $1.25 for every resident of the Commonwealth~~ *under the Code* . An amount equal to 10% of such limitation is set-aside for certain qualified nonprofit organizations. Credit allocations are counted against the Commonwealth's annual credit authority limitation for the calendar year in which the credits are allocated. The Code provides for the allocation of the Commonwealth's credit authority limitation to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the Code and, in such capacity, shall allocate for each calendar year credits to ~~owners of~~ *qualified* low-income ~~housing units~~ *buildings* in accordance herewith.

Credits are allocated to each qualified low-income building in a development separately. Credits may ~~not~~ be allocated ~~before~~ *to such buildings either (i) during* the calendar year in which ~~the subject~~ *such* building ~~in a development~~ is placed in service *or (ii) if the building meets the requirements of § 42 (h)(1)(E) of the Code, during one of the two years preceding the calendar year in which such building is expected to be placed in service* . Prior to such allocation, the authority shall receive and review applications for ~~set-asides~~ *reservations* of credits as described hereinbelow and shall make such ~~set-asides~~ *reservations* of credits to *qualified* low-income ~~housing units~~ *buildings* , subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and , *as applicable, either (i)* the placement in service of the *qualified* low-income ~~housing units~~ *buildings or (ii) the satisfaction of the requirements of § 42 (h)(1)(E) of the Code with respect to such*

buildings , the credits shall be allocated to ~~the owner of~~ such ~~units~~ *buildings* in the calendar year for which such credits were ~~set-aside~~ *reserved* by the authority.

The authority shall charge to each applicant who ~~receives an allocation of~~ *applies for* credits an administrative fee in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the Code. Such fee shall be payable at such times ~~as hereinafter provided or at such other times~~ as the executive director shall ~~for good cause~~ require.

§ 4. Solicitations of applications.

The executive director may from time to time take such action he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available credits are to be allocated and such other matters as he shall deem appropriate relating to the selection of applications. The authority may also consider and approve applications submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. Application.

Application for a ~~set-aside~~ *reservation* of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority, including, but not limited to: site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; evidence of a source of financing for the proposed development; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the mortgagor (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; an estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; identification of the low-income housing units; the maximum incomes of the persons and families who are to occupy the low-income housing units and the maximum rents which may be charged to such persons and families under the Code; an estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the residents of units in the proposed development; the allowances permitted by the Code for utility expenses to be paid by the residents of the low-income housing units; the amount of any governmental loan, insurance, subsidy or assistance which the applicant expects to receive for the proposed development; a schedule for the acquisition of the property, obtaining any financing, commencement and completion of any construction or rehabilitation, and placement of the development in service; a legal opinion [or other assurances satisfactory to the executive director] as to compliance of the proposed development with the Code; and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.

In the case of developments which are to be financed or otherwise assisted by a federal agency or instrumentality or on which the financing is to be insured by such an agency or instrumentality, the application may be submitted on the forms provided by such agency or instrumentality, provided that all information required by this § 5 is set forth on such forms or other documents submitted with such forms.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable ~~procedures, instructions and guidelines~~ *rules and regulations.*

The authority may consider and approve, in accordance herewith, *both* the *reservation and the* allocation of credits to *buildings in* any developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

§ 6. Review of application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review

of each application. Such review shall include, but not be limited to, the following:

1. A review of the rights of the applicant with respect to the acquisition and ownership of the site and an analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;

2. A review of the proposed housing development costs and an analysis of the adequacy of the proposed financing and other available moneys to fund such costs;

3. A review and evaluation of the applicant's schedule and of the feasibility of placing the low-income housing units in service in accordance therewith;

4. A review of the estimated operating expenses, utility expenses and allowances, and proposed rents and an evaluation of the adequacy of the proposed rents and other income to sustain the proposed development based upon the occupancy rate approved or required by the authority and upon estimated operating expenses and financing costs;

5. A market analysis as to the present and projected demand for the proposed development in the market area;

6. A review of the terms and conditions of the proposed financing and any governmental assistance;

7. A review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team;

8. An analysis of the proposed design and structure of the development, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed development; and

9. An analysis as to the feasibility of the applicant's qualifying for the credits in accordance with the Code.

In reviewing applications, the executive director may rely on the underwriting or other review procedures performed by or on behalf of any federal agency or instrumentality which is to finance, insure the financing on, or otherwise assist the development.

§ 7. Selection of application; ~~set-aside~~ *reservations* of credits.

Based on the authority's review of applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority, the executive director shall prepare a recommendation to the board ~~Commissioners~~ of the authority that a ~~set-aside~~ *reservation* of credits *in the form of a binding commitment as described in § 42 of the Code* be made ~~to~~ *with respect to the buildings described in* those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or determination which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development.

4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to proceed with the development in accordance with the proposed schedule and these ~~procedures, instructions and guidelines~~ *rules and regulations* .

6. The design of the proposed development will contribute to the marketability of the proposed development and will provide a safe living environment for such residents.

7. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.

8. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

9. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

10. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multifamily rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

11. All operating expenses (including customary replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

12. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable and comparable to income received on similar developments. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development.

13. The estimated income from the proposed development, including any governmental subsidy or assistance, is sufficient to pay debt service, operating expenses, and customary replacement and other reserves.

14. The low-income housing units will, prior to such data and during such period as the Code shall require, be occupied by persons and families whose incomes do not exceed the limits prescribed by the Code.

15. Sufficient demand in the market area of the development exists and will exist for the units in the development during the term of the credits. Occupancy of the development will be achieved in such time and manner that the proposed development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other reserves and escrows) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of the credits.

16. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with paragraph [15] of this section.

17. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

18. In the case of any development to be insured, subsidized or otherwise assisted or aided by any federal, state or local government, the proposed development will comply in all respects with any laws, rules and regulations relating thereto, and adequate insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable governmental entity.

19. The gross rents to be paid by families for the low-income housing units do not exceed 30% of the applicable qualifying income for a family of its size (reduced by any utility allowances as required by the Code). The amounts of any utility allowances are calculated in accordance with the requirements of the Code.

20. The applicant will be able to proceed with the development in accordance with the schedule submitted with the application, and as a result the proposed development will be placed in service ~~prior to or during the initial year for which the credits are requested~~ *within the time period required by the Code* .

21. A reliable source of financing is available in an amount and on terms and conditions which will permit the applicant to proceed with the development as proposed. Such financing, together with other moneys to be available to the applicant, will be sufficient to fund the acquisition and any construction or rehabilitation of the proposed development.

22. The prerequisites necessary for the members of the applicant's development team to acquire, own, construct or rehabilitate, operate and manage the proposed development have been satisfied or can be satisfied within a period of time consistent with the applicant's schedule for the proposed development. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning

status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) building, occupancy, and other permits required for any construction or rehabilitation and occupancy of the proposed development, and (vi) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia.

23. The allocation of credits to the applicant will result in an increase, or will prevent a decrease, in the supply of decent, safe and sanitary housing at affordable rents for the low-income persons and families intended to be served by the credits under the Code.

24. The applicant and the proposed development will satisfy all requirements set forth in the Code in order to be eligible for receipt of the credits in the amount requested.

In the application of the above criteria for the selection of applicants, the objective of the authority shall be that credits shall be ~~set aside~~ *reserved* for those developments which will best provide (with respect to location; design; quality of construction and management; cost of acquisition, rehabilitation or construction and operation; and other characteristics described in such criteria) decent, safe and sanitary housing at rents affordable to low income persons and families; will permit maximum use of the credits; will proceed successfully to completion or acquisition and operation; will qualify under the Code for such credits upon completion or acquisition; will thereafter continue to qualify for and fully utilize such credits in accordance with the requirements of the Code; and will best serve the housing needs of the Commonwealth.

If *applications are being reviewed on a first-come, first-served basis or if* only one application is being reviewed, the executive director shall recommend to the board ~~of Commissioners~~ *of the authority* that a ~~set-aside~~ *reservation* of credits be made ~~for such~~ *with respect to the buildings described in each such* application if he determines that such application adequately satisfies the criteria set forth above in this section.

In determining whether to recommend the selection of an application or applications, the executive director may take into account the desirability of allocating credits *with respect* to different ~~applicants~~ *developments located* throughout the Commonwealth. The executive director may also give special consideration to developments located in areas having severe shortages of low-income housing and to developments for the mentally and physically disabled and for persons and families having special housing needs.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual credit authority limitation shall be available for ~~set-asides~~ *reservation and allocation* to *buildings of* developments in which "qualified nonprofit organizations" materially participate in the development and operation thereof, as described in the Code. In no event shall more than 90% of the Commonwealth's annual credit authority limitation be available for developments other than those described in the preceding sentence.

If the executive director determines not to recommend the ~~set-aside~~ *reservation* of credits to an applicant, he shall so notify the applicant.

If the executive director determines that one or more of the criteria set forth above in this section have not been adequately satisfied by any applicant, he may nevertheless in his discretion recommend to the board ~~of Commissioners~~ that the ~~set-aside~~ *reservation* be approved subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board ~~of Commissioners~~ shall review and consider the analysis and recommendation of the executive director for the ~~set-aside~~ *reservation* of credits, and, if it concurs with such recommendation, it shall by resolution approve the application and authorize the executive director to ~~set aside~~ *reserve* the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* . If the board ~~of Commissioners~~ determines not to approve an application for a ~~set-aside~~ *reservation* of credits, the executive director shall so notify the applicant.

Upon approval by the board ~~of Commissioners~~ of a ~~set-aside~~ *reservation* of credits to an applicant, the executive director shall notify the applicant of such ~~set-aside~~ *reservation* and of any terms and conditions imposed with respect thereto ~~and may require the payment by the applicant of a nonrefundable processing fee, in such amount as the executive director determines, to reimburse the authority for its administrative costs in processing the application. Such fee shall be applied, upon allocation of the credits, toward the payment of the authority's administrative fee~~ . The executive director may ~~also~~ require the applicant to make a good faith deposit to assure that the applicant will comply with all requirements under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* for allocation of the credits. Upon allocation of the credits, such deposit (or a pro rata portion thereof based upon the portion of credits so allocated) shall be refunded to the applicant.

The executive director may reserve or allocate credits as provided herein prior to approval, but subject to ratification, by the board if he determines that circumstances warrant such action without further delay.

As a condition to the ~~set-aside~~ *reservation* of credits, the

executive director may require the submission of such legal and accounting opinions as he shall deem necessary to evidence that the ~~applicant~~ *buildings of the development* will be entitled to the credits under the Code.

If ~~the low-income housing units in the development have been placed in service~~ *all or certain of the buildings of a development are qualified low-income buildings* as of the date the application is approved by the board ~~of Commissioners~~ and if the owner thereof is otherwise then entitled to ~~the use of~~ the credits under the Code, the executive director may at that time allocate ~~the~~ credits to such ~~owner~~ *qualified low-income buildings* without first providing a ~~set-aside~~ *reservation* of such credits.

The executive director may require that applicants to whom credits have been ~~assigned~~ *reserved* shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development at its compliance with the schedule submitted with the application. If on the basis of such written confirmation and documentation and other available information the executive director determines that the ~~low-income housing units~~ *buildings* in the development *which were to be qualified low-income buildings* will not be placed in service ~~prior to or during the calendar year for which such credits are set aside~~ *within the time period required by the Code* or will not otherwise qualify for such credits, then the executive director may terminate the ~~set-aside~~ *reservation* of such credits.

Any material changes to the development, as proposed in the application, occurring subsequent to the ~~set-aside~~ *reservation* of the credits therefor shall be subject to the prior written approval of the executive director. If such changes are made without the prior written approval of the executive director, he may terminate the ~~set-aside~~ *reservation* of such credits.

In the event *that* any ~~set-aside~~ *reservation* of credits are terminated by the executive director under this section, he may ~~set aside~~ *reserve* or allocate, as applicable, such credits to other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

§ 8. Allocation of credits.

At such time as ~~the low-income housing units in a development are placed in service~~ *one or more of an applicant's buildings which have received a reservation of credits becomes qualified low-income buildings* , the applicant shall so advise the authority, shall request the allocation of all of the credits *so reserved* or such portion thereof to which the ~~applicant is~~ *applicant's buildings are then* entitled under the Code, and shall submit such certifications, legal and accounting opinions, and other documentation ~~(including, without limitations, evidence that the low-income housing units will be occupied within the time period required by the Code)~~ as the executive director shall require in order to determine that the ~~applicant is~~ *applicant's buildings are* entitled to such credits under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* . If the executive director determines that ~~the applicant is~~ *such buildings are* so entitled to the credits, he shall allocate the credits (or such portion thereof ~~as~~ *to which* he deems the ~~applicant~~ *buildings* to be entitled) to the ~~applicant~~ *applicant's qualified low-income buildings* in accordance with the requirements of the Code. If the executive director shall determine that the ~~applicant is~~ *applicant's buildings are* not so entitled to the credits, he shall not allocate the credits ~~to the applicant~~ and shall so notify the applicant ; ~~provided, however, that he may nevertheless allocate such credits subject to satisfaction of terms and conditions as he shall deem necessary or appropriate to assure that the applicant shall become entitled to the credits. Upon approval or denial by the executive director of the applicant's request for allocation of credits, the applicant shall pay the balance of the administrative fee to the authority~~ . In the event that any such applicant shall not request ~~all of the~~ *an* allocation of ~~its~~ *all of its reserved* credits or *whose buildings* shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may ~~set aside~~ *reserve* or allocate, as applicable, such unallocated credits to *the buildings of* other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

The executive director may prescribe such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year.

Prior to the initial determination of the "qualified basis" (as defined in the Code) of the *qualified* low-income ~~housing units in~~ *building of* a development pursuant to the Code, an applicant to ~~whom~~ *whose buildings* credits have been ~~set aside~~ *reserved* may request a ~~set-aside~~ *reservation* of additional credits. Subsequent to such *initial* determination of the qualified basis, the applicant may request an ~~increase in the amount~~ *additional allocation* of credits by reason of an increase in *qualified basis based on an increase in* the number of low-income housing units or in the amount of floor space of the low-income housing units. Any request for *an* additional *allocation of* credits shall include such opinions, certifications and documentation as the executive director shall require in order to determine that the ~~applicant~~ *applicant's buildings* will be entitled to such additional credits under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* and shall be submitted, reviewed and selected by the executive director in accordance with the provisions hereof.

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Title of Regulation: **VR 400-02-0012. Rules and Regulations for the Virginia Housing Fund (Formerly: Virginia Housing Fund Procedures, Instructions and Guidelines).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information).

VR 400-02-0012. Rules and Regulations for the Virginia Housing Fund.

PART I.
PURPOSE AND APPLICABILITY.

§ 1.1. Definitions.

~~*"Act"* means the Virginia Housing Development Authority Act as set forth in Chapter 1.2 (§ 36-55.24 et seq.) of the Code of Virginia.~~

~~*"Applicant"* means an individual, corporation, partnership, limited partnership, joint venture, trust, firm, association, public body or other legal entity or any combination thereof, making an application or proposal under these procedures, instructions and guidelines.~~

"Application" or *"proposal"* means a written request to the authority by a prospective borrower for a loan or a written request to the authority by an applicant requesting the establishment of a loan program or other assistance under ~~the procedures, instructions and guidelines~~ *these rules and regulations* .

~~*"Authority"* means the Virginia Housing Development Authority.~~

~~*"Board of commissioners"* means the board of commissioners of the authority.~~

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board of commissioners of the authority.~~

"Fund" means the housing fund created by the authority from moneys in its general fund for the purposes set forth herein.

"Loan" means any extension of credit which is made or financed or is to be made or financed pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Loan program" means any program requested to be developed or implemented by the authority for the purpose of providing loans pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* .

~~*"U.S. government or agency security"* means direct general obligations of the United States of America; obligations the payments of the principal of and interest on which, in the opinion of the Attorney General of the United States in office at the time such obligations were issued, are unconditionally guaranteed by the United States of America; or bonds, debentures, participation certificates or notes issued by any other agency or corporation which has been or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof the bonds, debentures, participation certificates or notes of which are unconditionally guaranteed by the United States of America.~~

§ 1.2. Applicability and purpose.

The ~~procedures, instructions and guidelines~~ *rules and regulations* that follow will be applicable to loans or programs for loans which are made or financed or are proposed to be made or financed by the authority to borrowers who have presented proposals or applications for loans or loan programs from the fund.

The purpose of the fund is to create new housing opportunities for lower income Virginians through its operation as a special purpose revolving loan fund. The highest priority is placed upon serving the elderly, disabled, and homeless as well as families in need of affordable housing not otherwise being serviced by other housing programs. The fund will also seek to provide support for comprehensive programs of neighborhood revitalization.

There will be special emphasis placed upon using the fund to attract and leverage other housing aid of all kinds including, but not limited to, financial, in kind, tax incentives and subsidies. The fund shall be used to encourage partnerships with both public and private interests including state agencies, localities and nonprofit organizations. The goal is to maximize the participation in, and resources devoted to, solving housing problems of lower income Virginians.

There will be an emphasis on creative uses of the fund which will result in the most effective use of its resources and advancement of the state of the art in providing decent housing at an affordable cost to lower income Virginians.

Notwithstanding anything to the contrary herein, the executive director is authorized to waive or modify any provision herein, where deemed appropriate by him, for good cause, to the extent not inconsistent with the Act ~~and the authority's rules and regulations~~ .

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority and

shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or repsonsibilities of the authority, the borrower, any contractors or any other parties under any agreements or documents relating to the loan.

These ~~procedures;~~ ~~instructions~~ ~~and~~ ~~guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements for loans or loan programs under the fund and are not intended to include all actions involved or required in the processing and administration of such loans or loan programs. Because the fund is an experimental venture, in order to refine and improve its implementation, it is the intention of the authority to be flexible in its interpretation of the principles set forth herein for loans or loan programs of special merit. These ~~procedures;~~ ~~instructions~~ ~~and~~ ~~guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by additional policies, ~~procedures;~~ ~~instructions~~ ~~and~~ ~~guidelines~~ *rules and regulations* adopted by the authority from time to time. The authority reserves the right to change the size of the fund or its uses as circumstances may reasonably dictate.

PART II.
PRINCIPLES GOVERNING THE FUND.

§ 2.1. General principles.

~~A.~~ The fund is a revolving loan fund. It is the authority's intent that repaid principal plus interest, less any loss of interest or principal in the event of default sustained by the fund, will be recycled and loaned to additional projects up to the full amount of the fund as approved by the board ~~of~~ ~~commissioners~~ .

~~B.~~ Project and program proposals will be given preference in the selection process to the extent they address the following:

1. Needs of the user group, which shall be primary;

2. Partnerships which maximize leveraging of fund loans;

3. Extent to which the project is either innovative or demonstrates a possible "breakthrough" idea for serving lower income households or both;

4. Potential for the project to the replicable (i.e., demonstration);

5. Financial soundness and experience of the sponsor.

~~C.~~ Proposals should seek to maximize the number of persons or projects which are served. Projects which highly leverage fund moneys by attracting external subsidies and capital are encouraged.

~~D.~~ The authority will seek an equitable geographic distribution of loans made from the fund.

~~E.~~ All loans to be made from the fund shall comply with all applicable laws and regulations to which the authority is subject and with any ~~procedures;~~ ~~instructions~~ ~~and~~ ~~guidelines~~ *rules and regulations of the authority* applicable or to be applicable thereto and such other underwriting criteria as the executive director deems necessary to protect the interests of the authority as lender.

PART III.
TERMS OF LOANS AND INTEREST RATES.

§ 3.1. Terms of loans.

Ten years shall be the maximum loan term, although longer amortization schedules may be utilized.

§ 3.2. Interest rates.

The interest rate on loans shall be determined pursuant to a schedule and criteria established from time to time by a resolution of the board ~~of~~ ~~commissioners~~ . Such interest rates are expected to be significantly lower than those which would be available from other sources and, at the same time, will provide continuing support for the authority's currently outstanding and future bond issues. The authority realizes that loans will have significantly higher risks than alternative investments and will have little or no liquidity. If deemed necessary, all or a portion of the interest payments on loans may be deferred by the authority.

PART IV.
PROPOSALS AND LOAN APPLICATIONS.

§ 4.1. Solicitation of applications and proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals or applications for the fund. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission and selection of applications and proposals as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available moneys in the fund are to be allocated and such other matters as he shall deem appropriate relating to the selection of applications and proposals or the establishment of programs. The authority may also consider and approve applications and proposals submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 4.2. Authority programs under the fund.

Programs may be designed and operated by the authority if they are innovative, cannot currently be conventionally funded, or may serve as models for future state or bond funding.

§ 4.3. Application and selection for processing.

Application for a loan or loan program shall be commenced by filing with the authority an application or proposal on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority.

Based on the applications, proposals, documents and any additional information submitted by applicants or obtained from other sources by the authority, a subcommittee of the board ~~of commissioners~~ shall select for processing those applications and proposals which it determines may best satisfy the purposes and principles of the fund set forth in §§ 1.2 and 2.1 hereof.

Nothing contained herein shall require the authority to select any application or proposal which, in the judgment of the subcommittee of the board ~~of commissioners~~ , does not adequately satisfy the purposes and principles of the fund set forth in §§ 1.2 and 2.1 hereof.

The selection by the subcommittee of the board ~~of commissioners~~ shall be based only on the documents and information received or obtained by it at that time and shall be subject to modification or reversal upon receipt and further analysis of additional documents or information at a later time.

After selection of an application or proposal for a loan has been made by the subcommittee of the board ~~of commissioners~~ , such application will then be processed by the authority in accordance with the authority's applicable ~~procedures, instructions and guidelines~~ *rules and regulations* or, if no such ~~procedures, instructions and guidelines~~ *rules and regulations* are applicable, in accordance with such written agreement or agreements with the applicant as the executive director may require to effect the purposes and principles hereof and to protect the authority's interest as lender.

After selection of an application or proposal for a loan program has been made by the subcommittee of the board ~~of commissioners~~ , the authority may implement such program by (i) applying any then existing ~~procedures, instructions and guidelines~~ *rules and regulations* of the authority, (ii) promulgating new ~~procedures, instructions and guidelines~~ *rules and regulations* therefor, or (iii) entering into such written agreement or agreements with the applicant or proposed borrowers or both as the executive director may require consistent with the purposes and principles hereof and the authority's interest as lender.

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Title of Regulation: **VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons (Formerly: Procedures, Instructions and Guidelines for Multi-Family Housing Developments for Mentally Disabled Persons).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

§ 1. Definitions.

~~*"Act"* means the Virginia Housing Development Authority Act, being Chapter 1.2 (§ 36-55.24, et seq.) of Title 36 of the Code of Virginia.~~

~~*"Authority"* means the Virginia Housing Development Authority.~~

~~*"Board"* means the board of commissioners of the authority.~~

"Closing" means the time of execution by the mortgagor of the documents evidencing the M/D loan, including the deed of trust note, deed of trust and other documents required by the authority. (In the case of a construction loan, "closing" means the initial closing of the M/D loan.)

"Construction" means construction of new structures and the rehabilitation, preservation or improvement of existing structures.

"DMHMR" means the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia.

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the board.~~

"Final closing" means, for a construction loan, the time of final disbursement of the M/D loan proceeds after satisfaction by the mortgagor of all of the authority's requirements therefor.

"M/D development" means a multi-family housing development intended for occupancy by persons of low and moderate income who are mentally disabled.

"M/D loan" means a mortgage loan made by the authority to finance the development, construction, rehabilitation and/or the ownership and operation of an M/D development.

"Seed loan" means a mortgage loan made by the

authority to finance preconstruction or other related costs approved by the authority and the financing of which by the authority is determined by the authority to be necessary to the mortgagor's ability to obtain an M/D loan for the construction of an M/D development.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the ~~Virginia Housing Development~~ authority ~~(the "authority")~~ to mortgagors to provide the construction and/or permanent financing of M/D developments. ~~Such loans are referred to herein as "M/D loans."~~ These ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to the making of such M/D loans directly by the authority to mortgagors, the purchase of such M/D loans, the participation by the authority in such M/D loans with mortgage lenders and any other manner of financing of such M/D loans under the ~~Virginia Housing Development Authority~~ Act. These ~~procedures, instructions and guidelines~~ *rules and regulations* shall not, however, apply to any M/D developments which are subject to any other ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority. If any M/D loan is to provide either the construction or permanent financing (but not both) of an M/D development, these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to the extent determined by the executive director to be appropriate for such financing. In addition, notwithstanding the foregoing, the executive director may, in his discretion, determine that any M/D loan should be processed under the ~~Procedures, Instructions and Guidelines~~ *authority's Rules and Regulations* for Multi-Family Housing Developments, whereupon the application for such M/D loan and any other information related thereto shall be transferred to the authority's multi-family division for processing under the aforementioned multi-family ~~Procedures, Instructions and Guidelines~~ *rules and regulations* .

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any M/D development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act , ~~the authority's rules and regulations,~~ and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 8 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

These ~~procedures, instructions and guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of M/D loans under the authority's multi-family housing programs for M/D developments. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to any particular development or developments or any multi-family housing program or programs for M/D developments.

§ 3. Income limits and general restrictions.

The amounts payable, if any, by persons occupying M/D developments are deemed not to be rent. As a result, the authority's income limit set forth under § ~~1.2.B of~~ its rules and regulations limiting a person's or family's adjusted family income to an amount not greater than seven times the total annual rent is inapplicable; instead, in accordance with ~~the same aforementioned section of~~ the authority's rules and regulations, the income limits for persons occupying such developments shall be as follows: All units of each M/D development, with the sole exception of those units occupied by an employee or agent of the mortgagor, shall be occupied or held available for occupancy by persons who have adjusted family incomes (as defined in the authority's rules and regulations and as determined at the time of their initial occupancy) which do not exceed 150% of the applicable area median income as determined by the authority and who are mentally disabled.

The board may establish, in the resolution authorizing any mortgage loan to finance an M/D development under these rules and regulations, income limits lower than those provided herein for the occupants of the units in such M/D development.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, *the occupancy of the M/D development shall comply with such limitations, and* the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the M/D development shall be computed, for the purpose of determining eligibility for occupancy thereof under ~~the authority's~~ *these* rules and regulations ~~and these procedures, instructions and guidelines,~~ in the manner specified in such federal law and rules and regulations,

subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all M/D developments and the processing thereof under the terms hereof must comply with (i) the Act and the authority's rules and regulations, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such M/D developments, *and* (iii) the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the M/D developments. Copies of the authority's applicable note and bond resolutions, if any, are available upon request.

§ 4. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance M/D developments. The term of the mortgage loan shall be equal to (i) if the M/D loan is to finance the construction of the proposed M/D development, the period determined by the executive director to be necessary to: (1) complete construction of the M/D development, and (2) consummate the final closing of the M/D loan; plus (ii) if the M/D loan is to finance the ownership and operation of the proposed M/D development, an amortization period set forth in the M/D loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any assistance or subsidy.

M/D loans may be made to (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 95% of the fair market value of the property as determined by the authority) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed [100% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is the Commonwealth of Virginia or any agency or instrumentality thereof, and which shall in no event exceed] 95% of the fair market value of the property as determined by the authority [in those cases in which the nonprofit sponsor is not the Commonwealth of Virginia or an agency or instrumentality thereof]) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the M/D loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the M/D loan and the fulfillment of its public purpose. Such factors may include the economic feasibility of the proposed M/D development in terms of its ability to pay the projected debt service on the M/D loan and the projected operating expenses of the proposed M/D development.

The categories of cost which shall be allowable by the authority in the acquisition and construction of an M/D development financed under these rules and regulations shall include all reasonable, ordinary and necessary costs and expenses (including, without limitations, those categories of costs set forth in the authority's rules and regulations for multi-family housing developments) which are incurred by the mortgagor in the acquisition and construction of the M/D development, the total of housing development costs shall be certified to the authority in accordance with these rules and regulations, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.5% of the M/D loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at such times as hereinafter provided or at such other times as the executive director shall for good cause require.

§ 5. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of M/D developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of M/D developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of M/D developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 6. Application and review.

A. Information to be submitted.

Application for an M/D loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to:

1. Information with respect to the status of the proposed development site and the surrounding community;

2. Any option or sales contract to acquire the site;

3. An evaluation of the need and effective demand for the proposed M/D development in the market area of such site;

4. Information regarding the legal, business and financial status and experience of the applicant;

5. Information regarding amenities and services proposed to be offered to the tenants;

6. A determination by DMHMR on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed necessary by DMHMR for the success of a housing development intended for occupancy by persons of low and moderate income who are mentally disabled, (ii) that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled, and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMR for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMR relied in making its determination must be included);

7. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or

8. The applicant's (i) best estimates of the housing development costs and the components thereof, (ii) proposed M/D loan amount, (iii) proposed annual operating budget and the individual components thereof, (iv) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (v) amount of any subsidy or assistance, including any described in item 6 above, that the applicant is requesting for the proposed M/D development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

9. The applicant's *proposed* tenant selection ~~plans, including description and analysis of tenant selection strategies, techniques and procedures to be followed;~~ *plan which shall include, among other information that the executive director may require from time to time, the following: (i) any proposed fees to be charged to the tenants; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.*

10. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed *M/D* development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the *M/D* development; and

11. A nonrefundable processing fee equal to 0.5% of the proposed M/D loan amount. Such fee shall be applied at closing toward the payment of the authority's financing fee.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. Such appraisal shall not be obtained until the authority has received the processing fee required by § 6.A.11 above. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

B. Review of the application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed M/D development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;

2. An evaluation of the ability, experience and financial capacity of the applicant;

3. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D development;

4. A review of the tenant selection plans, including its effect on the economic feasibility of the proposed M/D development and its efficacy in carrying out the programs and policies of the authority;

5. An analysis of the drawings and specifications, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed M/D development.

C. Requirement that application satisfy certain criteria.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed M/D development, the executive director may issue a commitment for an M/D loan to the applicant with respect to the proposed M/D development provided that he has determined that all of the following criteria have been satisfied:

1. The vicinity of the proposed M/D development is and will continue to be a residential area suitable for the proposed M/D development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed M/D development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks and recreational facilities) in the area of the proposed M/D development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

4. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.

5. The application and proposed M/D development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.

7. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Subject to review by the authority, in the case of construction loans at final closing or in the case of permanent loans at closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the closing documents or under such other requirements as shall be agreed to by the authority.

9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the

proposed M/D development are incidental or related to the proposed M/D development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

10. The estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

11. The drawings and specifications shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe and habitable living accommodations and environment for the contemplated residents.

12. The tenant selection plans submitted by the applicant shall comply with ~~the authority's~~ *these* rules and regulations and shall be satisfactory to the authority.

13. The proposed M/D development will comply with (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued or to be issued by the authority to finance the proposed M/D development and (ii) all requirements set forth in the resolutions, if any, pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the applicant to acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed M/D development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

15. The proposed M/D development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

16. The proposed M/D development will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the financing of the proposed M/D development will meet the applicable requirements set forth in § 36-55.39 of the Code of Virginia. For the purposes of satisfying subsection B of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

§ 7. Commitment.

If the executive director determines that the foregoing criteria set forth in § 6.C above are satisfied and that he will recommend approval of the application and issuance of the commitment therefor, he shall either (i) present his recommendations to the board or (ii) ~~in accordance with the authority's rules and regulations,~~ *if the maximum principal amount of the M/D loan does not exceed $300,000,* issue the commitment subject to the approval and ratification of the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion either (i) in the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor, recommend to the board that the application be approved and that a ~~mortgage loan~~ commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate or (ii) in the case of ~~an M/D loan~~ *a* commitment to be issued by the executive director subject to ratification by the board all in accordance with ~~the authority's~~ *these* rules and regulations, issue such commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

~~In the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor,~~ The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize *or ratify, as applicable, the M/D loan and* the issuance of a commitment *therefor* , subject to such terms and conditions as the board shall require in such resolution. ~~Such resolution and the commitment issued pursuant thereto shall in all respects conform to the requirements of the authority's rules and regulations.~~

The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the

board's resolution authorizing or ratifying such M/D loan or in the commitment therefor. The resolution or the commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such resolution or commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs. Such a resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 10 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

An M/D loan shall not be authorized or ratified by the board unless the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of Virginia; provided, however, that the board may in its discretion authorize or ratify the M/D loan without making the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the M/D loan.

If the executive director determines not to recommend approval of the application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

§ 8. Closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "closing documents") required by the commitment within the time period specified. When the closing documents have been submitted and approved by the authority staff, the board has approved or ratified the commitment and has determined that the financing of the proposed M/D development meets all the applicable requirements of § 36-55.39 of the Code of Virginia, and all other requirements in the commitment have been satisfied, the closing of the M/D loan shall be held. At this closing, the closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the financing fee, will make any equity investment required by the closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of M/D loan proceeds will be made by the authority, if appropriate under the commitment and the closing documents.

The actual interest rate on the M/D loan shall be established by the executive director at the time of the execution of the deed of trust note at closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the M/D development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 9. Construction.

In the case of construction loans, the construction of the M/D development shall be performed in accordance with the closing documents. The authority shall have the right to inspect the M/D development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the closing documents and to ascertain the propriety and validity of M/D loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of M/D loan proceeds may only be made upon compliance with the terms and conditions of the closing documents with respect to any such disbursement; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 10. Completion of construction and final closing.

In the case of construction loans, the closing documents shall specify those requirements and conditions that shall be satisfied in order for the M/D development to be deemed to have attained final completion. Upon such final completion of the M/D development, the mortgagor,

general contractor, and any other parties required to do so by the closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the closing documents or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the closing documents in order to attain final completion, make the final disbursement of M/D loan proceeds, obtain any subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the closing documents:

1. The total development costs, ~~the fair market value of the M/D development,~~ the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;

2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and

3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the M/D development as finally determined by the authority and the final principal amount of the M/D loan as to such M/D development.

§ 11. Seed money loans.

Notwithstanding anything herein to the contrary, the executive director may, in his discretion, approve an application on such forms as he may prescribe for a seed money loan and issue a commitment therefor subject to ratification by the board.

§ 12. M/D loan increases.

Prior to closing, the principal amount of the M/D loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed M/D development, is necessary or desirable to effect the successful construction and operation of the proposed M/D development, can be funded from available proceeds of the authority's notes or bonds *or other available funds of the authority* , and is not inconsistent with the provisions of the Act or ~~the authority's~~ *these* rules and regulations ~~or any of the provisions of these procedures, instructions and guidelines~~ . Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to closing, the authority will consider and, where appropriate, approve an M/D loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the M/D development approved by the authority which will improve the quality or value of the M/D development or will reduce the costs of operating or maintaining the M/D development;

2. Where cost increases are incurred as a direct result of [a] failure by the authority during processing of the M/D development to properly perform an act for which the authority is solely responsible;

3. Where an M/D loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to closing to provide an M/D loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

Any such increase in the M/D loan subsequent to closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the M/D loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an M/D loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional subsidy (if the M/D development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such M/D loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the M/D loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the M/D development.

4. A determination by the authority that the M/D loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the closing documents as approved by the authority) as is established in the resolution authorizing the M/D loan in accordance with ~~§ 3~~ *§ 4* of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the M/D loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and ~~the authority's~~ *these* rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the M/D loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the M/D loan set forth in the commitment, provided that such increase is consistent with the Act and ~~the authority's~~ *these* rules and regulations ~~and the provisions of these procedures, instructions and guidelines~~ . Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 12 shall impose any duty or obligation on the authority to increase any M/D loan, as the decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

§ 13. Operation and management.

The M/D development shall be subject to certain regulatory covenants in closing documents entered into at closing between the authority and the mortgagor. Such regulatory covenants shall govern the occupancy, maintenance, operation, use and disposition of the M/D development and the activities and operation of the mortgagor. *The mortgagor shall execute such other documents with regard to the regulation of the M/D development as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit the fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.*

The mortgagor shall lease the units in the M/D development only to persons who are eligible for occupancy thereof as described in § 3 of these ~~procedures, instructions and guidelines~~ *rules and regulations* . The mortgagor shall comply with the provisions of the authority's rules and regulations regarding (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the M/D development and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the M/D development.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this § 13.

§ 14. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 14 shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the M/D development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the M/D loan or, (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12-month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean (i) in the case of a transfer of a partnership interest, the owner of the M/D development as proposed to be restructured by such transfer, and (ii) in the case of a transfer of the M/D development, the entity which proposes to acquire the M/D development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain (i) a detailed description of the terms of the transfer, (ii) all documentation to be executed in connection with the transfer, (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current

financial statements (which shall be audited in the case of a business entity), (iv) an analysis of the current physical and financial condition of the M/D development, including a current audited financial report for the M/D development, (v) information regarding the experience and ability of any proposed management agent, and (vi) any other information and documents requested by the authority relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the M/D development in a manner satisfactory to the authority.

2. The M/D development's physical and financial condition shall be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:

a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;

b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the M/D development, will reduce the costs of operating or maintaining the M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

C. The authority will charge the proposed ownership entity a fee of $5,000 or such higher fee as the executive director may for good cause require. This fee is to be paid at the closing.

D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the ~~mortgage~~ *M/D* loan does not exceed the limitations specified in the Act and ~~the authority's~~ *these* rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

E. A request for tansfer of ownership shall be reviewed by the executive director and may be approved by him subject to such terms and conditions as he may require.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the executive director.

The authority may require that the proposed ownership entity execute the then current forms of the authority's M/D loan documents in substitution of the existing M/D loan documents and/or to execute such amendments to the existing M/D loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the M/D development.

In the case of an M/D development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the M/D development and/or to protect the authority's interest as lender.

§ 15. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the M/D development subsequent to prepayment, (ii) any actual or potential termination or reduction of any subsidy or other assistance, (iii) the current and future need and demand for low and moderate housing *for mentally disabled persons* in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 15 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

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Title of Regulation: **VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments (Formerly: Procedures, Instructions and Guidelines for the Acquisition of Multi-Family Housing Developments).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments.

§ 1. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to the acquisition, ownership and operation by the ~~Virginia Housing Development~~ authority ~~(the "authority")~~ or by any entity formed by the authority, on its own behalf or in conjunction with other parties, of multi-family housing developments intended for occupancy by persons and families of low and moderate income ("development" or "developments"). The developments to be acquired pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* may be existing developments or may be developments to be constructed prior to acquisition. If the authority is to acquire an existing development, the provision of these ~~procedures, instructions and guidelines~~ *rules and regulations* relating to construction shall, to the extent determined by the executive director, not be applicable to such development. These ~~procedures, instructions and guidelines~~ *rules and regulations* shall also be applicable to the making of mortgage loans by the authority (i) to finance the construction of such developments prior to the acquisition thereof by the authority (such mortgage loans are referred to herein as construction loans) and (ii) to finance the acquisition and ownership of such developments by entities formed by the authority as described herein. If any development is to be subject to federal mortgage insurance or is otherwise to be assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision herein. Furthermore, if the development is to be subject to mortgage insurance by the federal government, the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the ~~Virginia Housing~~

~~Development Authority~~ Act ~~(the "Act")~~ or fulfill the authority's public purpose and obligations thereunder. The term "construct" or "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

Developments may be acquired pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act ; ~~the authority's rules and regulations,~~ and convenants and agreements with the holders of its bonds.

~~"Executive director" as used herein refers to the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the board of commissioners of the authority (the "board").~~

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the applicant, any mortgagor, or any contractor or other members of the development team under the initial closing documents as described in § 7 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

These ~~procedures, instructions and guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of proposals for the authority to acquire developments or to provide financing for such developments under the authority's multi-family housing acquisition program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time ~~with respect to any particular development or developments~~ .

§ 2. Income limits and general restrictions.

In order to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined in the authority's rules and regulations) greater than seven times the annual rent, including utilities except telephone, applicable to such dwelling unit *; provided, however, that the foregoing shall not be applicable if no amounts are payable by or on behalf of such person or family or if amounts payable by such person or family are deemed by the board not to be rent* . In addition to the foregoing, at least 20% of the units in each development shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 80% of the area median income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 150% of such area median income as so determined.

The board may establish, in the resolution authorizing the acquisition of any development under these rules and regulations, income limits lower than those provided herein for occupancy of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof under ~~the authority's~~ *these* rules and regulations ~~and these procedures, instructions and guidelines~~ , in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act ~~and the authority's rules and regulations~~ , (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued by the authority to finance such developments, (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

§ 3. Terms of acquisition and construction loan.

The purchase price for a development to be acquired by the authority pursuant hereto shall be determined by the authority in such manner and shall be based upon such factors (including the fair market value of the development based on an appraisal thereof as well as on

the estimated costs of the construction of the development, if applicable) as it deems relevant to the security of its ownership interest in the development and the fulfillment of its public purpose. The terms and conditions of such acquisition shall be contained in the commitment described in § 6 hereof and in the contract, if any, to acquire the development described in § 7 hereof.

With respect to any development which the authority contracts to acquire, the authority may assign all of its right, title and interest under such contract to acquire such developments to an entity (a "successor entity") formed by the authority, on its own behalf or in conjunction with other parties, to serve as the housing sponsor for such development pursuant to § 36-55.33:2 of the Code of Virginia and may provide a mortgage loan to such entity to finance the acquisition and ownership of the development.

In addition to the acquisition of developments, the authority may make or finance construction mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance the construction of such developments. The term of such a construction loan shall be equal to the period determined by the executive director to be necessary to complete construction of the development and to consummate the acquisition thereof by the authority. Such construction loans shall be made on such other terms and conditions as the authority shall prescribe in (i) the commitment described in § 6 hereof and (ii) any other applicable initial closing documents, described in § 7 hereof. Such construction loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 100%. The maximum principal amount and percentage of estimated housing development costs specified or established in the commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and the fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed. *In determining the estimated housing development costs, the categories of costs which shall be includable therein shall be those set forth in the authority's rules and regulations for multi-family housing developments to the extent deemed by the executive director to be applicable to the proposed development.* The interest rate on the construction loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.0% of the construction loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at initial closing or at such other times as the executive director shall for good cause require.

§ 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the authority's acquisition and, if applicable, construction financing of developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of developments for acquisition and, if applicable, construction financing as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated for such acquisitions and financings and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for acquisition and, if applicable, construction financing of developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. Application and acceptance for processing.

Application for consideration of each proposal for the authority to acquire a development and, if applicable, to finance the construction thereof shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the owner (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the

tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia, if applicable, and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;

2. An evaluation of the ability, experience and financial capacity of the applicant and general contractor and the qualifications of the artchitect, management agent and other members of the proposed development team;

3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;

4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated purchase price and financing costs; and

5. A preliminary evaluation of the marketability of the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for the use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any defects which would have a materially adverse effect on such construction and operation.

4. The location of the proposed development will promote and enhance the marketability of the units to the persons and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

6. The design of the proposed development is functional and appropriate for its intended use, will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. Subject to further review and evaluation by the authority's staff under § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* , the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. Subject to further review and evaluation by the authority's staff under § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* , the proposed rents appear to be at levels which will (i) be affordable by the persons and families intended to be assisted by the authority, (ii) permit the successful marketing of the units to such persons and families, and (iii) sustain the operation of the proposed development.

9. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the construction and, prior to acquisition thereof by the authority, the ownership, operation, marketing, maintenance and management of the proposed

development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

12. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

13. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* and that the proposed development will otherwise continue to be processed through initial closing and will be completed and conveyed to the authority all in compliance with the Act ~~and the authority's rules and regulations~~ , the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* and without unreasonable delay, interruptions or expense.

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satifies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of acquiring developments from different sponsors throughout the Commonwealth of Virginia.

Applications shall be selected only to the extent that the authority has or expects to have funds available from the sale of its notes or bonds to finance the acquisition of and, if applicable, the construction loan for the proposed developments.

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If ay proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto.

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

§ 6. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including without limitation the following:

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;

2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;

3. The applicant's best estimates of (i) the housing development costs and the components thereof, (ii) proposed construction loan amount (if applicable), (iii) proposed rents, (iv) proposed annual operating budget and the individual components thereof, (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

4. The proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed

income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development.

~~4.~~ *5.* The applicant's marketing *plan,* ~~and tenant selection plans,~~ including description and analysis of ~~marketing and tenant selection~~ strategies, techniques and procedures to be followed in marketing the units ~~and selecting tenants~~ prior to acquisition of the development by the authority; and

~~5.~~ *6.* Any documents required by the authority to evidence compliance with all conditions and requirements necessary to construct, and, prior to the acquisition by the authority of the development, to own, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the proposed development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the documents and information received or obtained pursuant to this § 6. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;

2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall prepare a recommendation to the board that a commitment of the authority to enter into a contract with the applicant for the acquisition of the development by the authority and, if applicable, to make a construction loan for the development be issued to the applicant only if he determines that all of the following criteria have been satisfied:

1. Based on the data and information received or obtained pursuant to this § 6, no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

2. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the

executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

3. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

4. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

5. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such income received on similar developments.

6. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the notes or bonds issued by the authority to acquire the development (plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development), the operating expenses, and replacement and other reserves required by the authority.

7. The units will be occupied by persons and families intended to be served by the proposed development and eligible under the Act, ~~the authority's~~ *these* rules and regulations, ~~and these procedures, instructions and guidelines~~ and under any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development (i) will attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, replacement and other reserves required by the authority, and debt service on the notes or bonds issued by the authority to acquire the development, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of such notes or bonds.

8. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with the paragraph 7 above.

9. The architectural drawings, plans and specifications shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6.

10. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

11. The marketing and tenant selection plans submitted by the applicant shall comply with ~~the authority's~~ *these* rules and regulations and shall provide for actions to be taken prior to acquisition of the development by the authority such that (i) the dwelling units in the proposed development will be occupied in accordance with ~~the~~ paragraph 7 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development, (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures (including any occupancy criteria and priorities established pursuant to § 11 of these ~~procedures, instructions and guidelines~~ *rules and regulations*) to be applied by the owner in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

12. In the case of any development to be subject to mortgage insurance or otherwise to be assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

13. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the acquisition and, if applicable, the construction of the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the members of the applicant's development team to construct and, prior to the acquisition thereof by the authority, to operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia, (vi) building permits, and (vii) fee simple ownership of the site, a sales contract or option giving the applicant the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the construction or the authority's ownership or operation of the proposed development).

15. The proposed development will comply with all applicable state and local laws, ordinances, regulations and requirements.

16. The proposed development will provide valid and sound security for the authority's notes or bonds and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the acquisition and financing of the proposed development will meet the requirements set forth in §§ 36-55.33:2 and 36-55.39 of the Code of Virginia, as applicable.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval of the application and issuance of a commitment to acquire the development and, if applicable, to finance the construction of the development, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time perior as he shall deem appropriate.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to such terms and conditions as the board shall require in such resolution.

If the development is to be acquired by a successor entity formed by the authority as described in § 9 hereof, the ~~commitment~~ *resolution* shall authorize (i) the assignment to such successor entity of the authority's interest in the contract to acquire the development and (ii), if applicable, the making of ~~an authority mortgage~~ *a permanent* loan to such successor entity in an amount *set forth therein* ~~equal~~ to *finance* the acquisition cost of the development *and such other costs relating to the acquisition and ownership of the development and to the financing thereof as the authority shall deem necessary or appropriate* .

~~The resolution and commitment issued pursuant to this § 6 shall in all respects conform to the requirements of the Act and the authority's rules and regulations.~~

The purchase price for the development, the term and principal amount of any construction loan, the terms and conditions applicable to any equity contribution by the applicant for any construction loan, any assurances of successful completion of the development, and other terms and conditions of the acquisition and construction loan shall be set forth in the board's resolution or in the commitment issued pursuant to the resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the development and construction, if applicable, and the acquisition of the proposed development, the disbursement and repayment of the construction loan, if applicable, and other matters related to the development and construction, if applicable, and, prior to the acquisition thereof by the authority, the ownership, operation, marketing and occupancy (including any income limits or occupancy restrictions other than those set forth in these rules and regulations) of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial

schedule of rents, the approved initial budget for operation of the development and a schedule of the estimated housing development costs.

If the development is to be acquired by a successor entity which is a for-profit housing sponsor, the board may in its resolution prescribe, in accordance with the authority's rules and regulations for multi-family housing developments, the maximum annual rate at which distributions may be made.

Neither an acquisition by the authority of a development nor a construction or permanent loan for such development pursuant to these rules and regulations shall be authorized unless the board by resolution shall make the applicable findings required by §§ 36-55.33:2 and 35-55.39, as applicable, of the Code of Virginia; provided, however, that the board may in its discretion authorize the acquisition or the construction or permanent loan in advance of the issuance of the commitment therefor in accordance herewith without making the finding, if applicable, required by subsection A of § 36-55.33:2 and subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the authority's acquisition of the development and, if applicable, the financing of the construction or permanent loan for such development.

If the executive director determines not to recommend approval of an application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

§ 7. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the authority shall execute and deliver to the applicant a contract to acquire the development; provided, however, that in the case of the acquisition of any existing development, the applicant shall convey the development to the authority at the initial closing, and the authority shall pay the purchase price therefor to the applicant, all in accordance with the terms of the commitment. Also at the initial closing, the initial closing documents (including, in the case of an existing development, a housing management agreement between the authority and the management agent proposed by the authority or, in the case of a development to be constructed, an agreement between the authority and such agent to enter into a housing management agreement at final closing) shall be, where required, executed and recorded, and the applicant will make any initial equity investment required by the commitment and the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. If the authority is to provide construction financing for the development, the closing of the construction loan shall also be held at this time, the financing fee of 1.0% of the construction loan amount shall be paid to the authority, and the initial disbursement of construction loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents. The actual interest rate on the construction loan shall be established by the executive director at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of the deed of trust note.

If a successor entity as described in § 9 hereof is to acquire an existing development, the sale and conveyance of such development and the making of any permanent mortgage loan to such entity by the authority, all as set forth in § 9 hereof, shall be consummated at the initial closing.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction and, prior to acquisition by the authority, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit and latent construction defect escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 8. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of any construction loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. If the authority is providing construction financing, a disbursement of construction loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement by the authority shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 9. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion.

Prior to or concurrently with final closing, the applicant, the owner, the general contractor, the management agent and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents (including the contract to acquire the development) in order to attain final completion, obtain any federal insurance, subsidy or assistance and otherwise consummate the acquisition and the final closing. The owner shall deliver to the authority a fully executed deed conveying to the authority fee simple title to the development in accordance with the contract and shall execute and deliver such other final closing documents as the authority may prescribe. The authority shall pay to the owner the purchase price specified in the contract to acquire the development. The management agreement shall be executed by the authority and the management agent at the final closing. If the authority had provided the construction loan, such loan shall be repaid in full at final closing.

Prior to or concurrently with final closing, the executive director shall, if authorized by the ~~commitment~~ *resolution* , assign its interest in the contract to acquire the development to ~~an~~ *a successor* entity ~~(the "successor entity")~~ formed by the authority, on its own behalf or in conjunction with other parties, pursuant to the Act. Any reference to the authority in these ~~procedures, instructions and guidelines~~ *rules and regulations* with respect to the conveyance to or the acquisition, ownership or operation by the authority of a development shall be deemed to refer also to any such successor entity of the authority. Such successor entity shall purchase the development at final closing and otherwise perform the obligations of the authority as purchaser under the contract. The applicant shall convey title to the development to such successor entity and shall perform all of its other obligations as seller under such contract. Furthermore, if authorized by the ~~commitment~~ *resolution* , the authority shall at final closing provide to such successor entity a permanent mortgage loan secured by a first lien on the development ~~in an amount equal to the acquisition cost of the development paid by the successor entity in accordance with the contract or such other amount as the authority may approve consistent with the Act, the authority's rules and regulations and these procedures, instructions and guidelines~~ *to finance the acquisition and ownership thereof* . The making of such permanent mortgage loan shall take place at final closing upon the execution, delivery and recordation of such documents *as the executive director shall require* . Such permanent loan shall bear such interest rate and shall be subject to such terms and conditions as the executive director shall prescribe pursuant to and in accordance with the commitment. *For the purpose of determining any maximum annual dividend distributions by any such successor entity and the maximum principal amount of the permanent mortgage loan to such successor entity permissible under the Act, the total development costs shall be the cost of the acquisition as determined by the authority and such other costs relating to such acquisition, the financing of the permanent mortgage loan and the ownership and operation of the development as the authority shall determine to be reasonable and necessary. The equity investment of any such successor entity shall be the difference between such total development costs and the principal amount of the permanent mortgage loan.*

At the final closing, the authority shall determine in accordance with the initial closing documents any funds due the authority, the applicant, the owner, general contractor, the architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

§ 10. Construction loan and purchase price increases.

Prior to initial closing, the purchase price or the principal amount of any construction loan or both may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction of the proposed development, will not have a material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's construction loan or ownership interest in the development, can be funded from available proceeds of the authority's notes or bonds, and will not result in noncompliance with the provisions of the Act or ~~the authority's~~ *these* rules and regulations ~~or any of the provisions of these procedures, instructions and guidelines~~ (including, without limitation, the criteria set forth in § 6 hereof). Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve an increase in the purchase price or principal amount of the construction loan or both in the following instances:

1. Cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;

2. An increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the construction loan or its ownership interest to be acquired in the development; or

3. The authority has entered into an agreement with the mortgagor prior to initial closing to provide an increase if certain cost overruns occur, but only to the extent set forth in such agreement.

Any such increase in the construction loan or purchase price subsequent to initial closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following, as applicable:

1. The ability of the authority to sell bonds to finance the increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an increase to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service on the authority's notes and bonds to be paid as a result of any such increase in the purchase price, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the increase in the purchase price will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's ownership interest to be acquired in the development.

4. A determination by the authority that the construction loan, as increased, does not exceed such percentage of the estimated total development cost as is established in the resolution authorizing the construction loan, as applicable, in accordance with § 3 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the construction loan and its ownership interest to be acquired in the development, to comply with covenants and agreements with the holders of its bonds, if any, issued to finance the construction loan or the acquisition of the development, to comply with the Act and ~~the authority's~~ *these* rules and regulations, and to carry out its public purpose.

In the event of any increase in the purchase price pursuant hereto, the authority may also increase the principal amount of any permanent mortgage loan to be provided to any successor entity.

The executive director may, without further action by the board, increase the purchase price ~~or~~ , the principal amount of the construction loan *or the principal amount of the permanent loan* at any time by an amount not to exceed 2.0% ~~of the purchase price or the principal amount of the construction loan, respectively, as set forth in the commitment~~ *thereof* , provided that such increase is consistent with the Act and ~~the authority's~~ *these* rules and regulations ~~and the provisions of these procedures, instructions and guidelines~~ . Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 10 shall impose any duty or obligation on the authority to increase any purchase price or the principal amount of any construction loan *or permanent loan* , as the decision as to whether to grant a purchase price ~~or~~ , construction loan *or permanent loan* increase shall be within the sole and absolute discription of the authority.

§ 11. Operation, management and marketing.

The authority shall establish the rents to be charged for dwelling units in the development. Units in the development shall only be leased to persons and families who are eligible for occupancy thereof as described in § 2 of these ~~procedures, instructions and guidelines~~ *rules and regulations* . The authority (or any successor entity acquiring the development pursuant to § 9 hereof) shall examine and determine the income and eligibility of applicants for their initial occupancy of the dwelling units of the development and shall reexamine and redetermine the income and eligibility of all occupants of such dwelling units every two years following such initial occupancy or at more frequent intervals ~~at the option of the authority in accordance with § 8.3 of the authority's rules and regulations~~ *if required by the executive director. It shall be the responsibility of each applicant for occupancy of such a dwelling unit, and of each occupant thereof, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligiblity for occupancy as the executive director may require and to provide the authority (or any such successor entity) with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid* .

With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the authority (or any such successor entity) may terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such

person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit.

~~The provisions of § 8.3 of the authority's rules and regulations shall govern any person or family occupying a dwelling unit of a development whose family's adjusted family income as determined by a periodic examination and redetermination as aforesaid then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination.~~

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;

2. The status and physical conditon of the housing then occupied by such applicants; and

3. Any other factors or matters which the executive director deems relevant to the effectuation of the public purposes of the authority.

The authority (or any successor entity as described in § 9 hereof) shall develop a tenant selection plan for tenants eligible to occupy the development. *Such tenant selection plan shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source, (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the authority or such successor entity for tenant referals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development.* In selecting eligible residents, the authority (or any such successor entity) shall comply with such occupancy criteria and priorities and with the tenant selection plan.

The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments by management agents. Copies of the housing management handbook shall be available upon request.

The management of the development shall also be subject to a management agreement by and between the management agent and the authority (or any successor entity). Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The term of the management agreement shall be as prescribed by the executive director, and upon the expiration of such term the authority may renew or extend such management agreement or may contract with a different management agent on such terms and conditions as the executive director shall require. The development shall be managed in accordance with the Act, ~~the authority's~~ *these* rules and regulations, the management agreement and the authority's housing management handbook, if applicable.

If any successor entity formed pursuant to § 9 hereof is not within the exclusive control of the authority, the executive director may require that such entity and the development owned by and mortgage loan made to such entity be subject to such of the provisions of the authority's ~~procedures, instructions and guidelines~~ *rules and regulations* for multi-family housing developments as he shall require to protect its security for the mortgage loan, to protect its interest in such entity and to fulfill its public purpose under the Act.

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Title of Regulation: **VR 400-02-0015. Rules and Regulations for the Virginia Senior Home Equity Account Program (Formerly: Procedures, Instructions and Guidelines for the Virginia Senior Home Equity Account).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 400-02-0015. Rules and Regulations for the Virginia Senior Home Equity Account.

PART I.
PURPOSE AND APPLICABILITY.

§ 1.1. Definitions.

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

"Applicant" means a person or family, as defined in the authority's rules and regulations, who submits an application for a home equity account. An applicant may be an individual applicant or a joint applicant, as defined herein.

"Application" means a request to the authority by an applicant for a home equity account.

"Application date" means the date on which a completed application is received by the authority.

"Appraised value" means the value of a home as determined by an independent fee appraiser retained by the authority.

"Area agency on aging" or *"AAA"* means one of the local area agencies on aging which have been established on a local and regional basis throughout the Commonwealth pursuant to § 2.1-373 of the Code of Virginia.

"Area median income" means the area median income, adjusted for family size, for areas within the Commonwealth as established and published from time to time by the United States Department of Housing and Urban Development.

"Assessed value" means the value of the home as determined by the real estate assessment office of the local government body for tax purposes. The applicable assessed value shall be that value which is in effect as of the application date.

~~*"Authority"* means the Virginia Housing Development Authority, a political subdivision of the Commonwealth of Virginia, constituting a public instrumentality.~~

~~*"Board of Commissioners"* means the board of commissioners of the authority.~~

"Borrower" means a person or family, as defined in the authority's rules and regulations, to whom a home equity account loan is made by the authority. If a home equity account loan is made to more than one individual, such individuals are sometimes referred to herein as joint borrowers.

"Eligible applicant" means an applicant who satisfies the criteria set forth in Part II of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Equity payment" means a loan disbursement made by the authority to a borrower pursuant to an equity payment request.

"Equity payment request" means a request completed and signed by a borrower for the purpose of requesting an equity payment by the authority pursuant to the borrower's home equity account. Such payment request shall be on such form as prescribed by the authority and shall be mailed or delivered to the authority.

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board of commissioners.~~

"Home" means single family residential housing, as defined in the Act, which meets the requirements set forth in Part III of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Home equity account" means a line of credit made available by the authority to an eligible applicant which is secured by a first mortgage lien upon the applicant's home and, pursuant to which the authority agrees to make equity payments to the applicant in accordance with the applicant's equity payment requests, in amounts not to exceed the maximum established therefor and in accordance with the terms and conditions set forth in Part IV of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Home equity account loan" means the disbursements of equity payments to be repaid, together with interest thereon, as provided in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Income" means gross family income as defined in the authority's rules and regulations, including all salary, wages, bonuses, commissions, income from self employment, interest, dividends, alimony, rental income, pensions, business income, annuities, social security payments, cash public assistance, support payments, retirement income and any other sources of cash income which are being received by the applicant as of the application date. All such earnings, provided they are not temporary, shall be computed on an annual basis to determine income for the purpose of program eligibility.

"Individual applicant" means a single person who submits an application pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Joint applicant" means any two or more persons who submit an application pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Maximum amount available under the home equity account" shall mean the maximum principal amount which may be outstanding at any time under the home equity account.

"Program" means the Virginia senior home equity account program as described in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

"Value of home" or *"home value"* means the fair market value of the home as determined by the authority in accordance with these ~~procedures, instructions and guidelines~~ *rules and regulations* .

§ 1.2. Purpose and applicability.

~~This program is being implemented pursuant to Part IX of the authority's rules and regulations.~~ The purpose of the program is to permit elderly homeowners who satisfy certain age, residency and income criteria to borrow against the equity in their homes to assist in meeting housing, medical and other living expenses as specified in § 5.3 herein. Eligible applicants shall receive a commitment from the authority for a home equity account in a maximum amount based upon the interest rate or

rates to be charged thereon, the applicant's age and the value of the home. Upon satisfaction of the terms and conditions of such commitment, the authority shall make equity payments to the borrowers upon their request up to the maximum amount. All such equity payments will be made in accordance with the terms and conditions set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* . The maximum amount of such home equity account shall be subject to change in the manner set forth in § 4.2. The term during which the borrower may request and receive equity payments shall be established and may be extended as provided in § 4.8 hereof. Repayment of the home equity account loan is deferred as described herein, and, as a result, the borrowers may utilize the equity in their homes without being required to sell their homes at the end of a fixed term in order to repay the home equity account loans.

The program will be administered by the authority with the participation of the Virginia Department for the Aging and local area agencies on aging. Home equity accounts will be financed entirely with authority funds.

Notwithstanding anything to the contrary herein, the executive director of the authority is authorized with respect to any home equity account to waive or modify any provision herein where deemed appropriate by him for good cause to the extent not inconsistent with the ~~Virginia Housing Development Authority~~ Act ~~(the "Act"), the authority's rules and regulations~~ and federal statutes and regulations.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's requirements and procedures and are not intended to include all of the actions involved or required in the processing and administration of the program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to amendment at any time by the authority and may be supplemented by additional policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to the program. Notwithstanding anything to the contrary herein, all home equity accounts must comply with any applicable state and federal laws, rules and regulations.

PART II.
ELIGIBILITY OF APPLICANTS.

§ 2.1. Eligible applicants.

An applicant that, as of the application date, satisfies all of the following criteria shall be eligible for a home equity account under the program:

1. Age. An individual applicant or each joint applicant shall be 62 years of age or older.

2. Residency. An individual applicant or each joint applicant shall be a resident of the Commonwealth.

3. Income. The income of an individual applicant or the aggregate of the incomes of all joint applicants shall not, as of the application date, exceed 80% of the area median income.

4. Ownership. An individual applicant or the joint applicants shall be the sole owner or owners of the home, and no person who is not an owner may be an applicant.

5. Principal residence. An individual applicant or each joint applicant must occupy the home as his principal residence during the term of the home equity account.

6. Relationship of joint applicants. Joint applicants must be related by blood, marriage or adoption.

PART III.
ELIGIBILITY OF THE HOME.

§ 3.1. Title.

At the time of recordation of the deed of trust securing the home equity account, fee simple title to the home shall be vested in the applicant free and clear of all liens, encumbrances, assessments or other defects which might affect the priority of the authority's lien or are otherwise unacceptable to the authority. Notwithstanding the foregoing, the home may be subject to liens securing outstanding balances in an aggregate amount not greater than one third of the maximum amount available under the account; provided, however, that the initial equity payment from the home equity account shall be used at the closing thereof to pay off such outstanding balances in full. If the spouse of an individual applicant has an inchoate dower or curtesy interest in the home, such spouse shall execute the deed of trust securing the home equity account for the purpose of conveying such dower or curtesy interest as security for the home equity account loan.

§ 3.2. Condition of home.

The home and all fixtures attached thereto shall be in a state of repair and condition satisfactory to the authority; provided, however, that the authority may require the applicant to use at settlement all or a portion of the initial equity payment on the home equity account to make necessary repairs and improvements to the home in a manner acceptable to the authority.

§ 3.3. Taxes.

All real estate taxes and assessments due and payable against the home as of the the date of recordation of the deed of trust securing the home equity account shall have been paid by the applicant; provided, however, that the authority may require the applicant to use their initial equity payment to pay such taxes and assessments.

§ 3.4. Insurance.

At the time of recordation of the deed of trust securing the home equity account, the home shall be insured against such loss and by such insurers as the authority shall approve or require and in an amount at least equal to the value of the home or such other amount as the authority may approve.

PART IV.
TERMS AND CONDITIONS.

§ 4.1. Maximum amount.

The authority shall provide to an eligible applicant a maximum amount available under the home equity account based upon the interest rate or rates to be charged thereon, the age of an individual applicant or of the youngest joint applicant as of the application date, and the value of the home.

The value of the home shall be determined by the authority based on the home's assessed value, unless the authority, at its option and at its cost, elects to have the home appraised and to use the appraised value rather than the assessed value in so determining the value of the home. Also, if requested by the applicant, the authority may, at its option and at the cost of such applicant, obtain an appraisal of the home for use by the authority, in lieu of the assessed value, in determining the value of the home.

Prior to September 1, 1988, and on or about January 1 of each subsequent year, the executive director shall establish a schedule which sets the maximum percentages of the home value by age group based upon the interest rate to be in effect for such year. The maximum amount of the home equity account during such year shall be equal to such maximum percentage applicable to the age group of the applicant (or, in the case of joint applicants, the youngest applicant) as of the application date times the value of the home.

The maximum amount which may be disbursed under any home equity account shall in no event exceed $50,000.

The applicant may, at its option, request a lower maximum amount than may be approved by the authority, in which case the maximum amount shall be the amount so requested.

§ 4.2. Adjustments in the maximum amount.

The maximum amount available under a home equity account shall be adjusted annually in accordance with the schedule then established pursuant to § 4.1 hereof. For the purpose of determining such adjusted maximum amount, the age of the borrower shall be his age (or, in the case of joint borrowers, the youngest borrower's age) as of January 1 of such year. Notwithstanding the foregoing, such maximum amount shall not be increased if (i) the authority has determined not to make funds available for such increase, or (ii) the applicant requests that the maximum amount not be increased.

If on or after five years from the date of extension of the home equity account the borrower has utilized the maximum amount available thereunder, he may request the authority to approve an increase in the value of the home. Such increase may be granted only if such increase is due to appreciation or improvements. Any such increase shall be determined by the authority based upon the then current assessed value, except that the authority may, at its option and at the request and cost of the borrower, obtain an appraisal for use by the authority, in lieu of the assessed value, in so determining the value of the home. The maximum amount available under the home equity account, as so increased, shall be calculated in accordance with the schedule established pursuant to § 4.1 hereof using the age of the borrower (or, in the case of joint borrowers, the age of the youngest borrower) as of January 1 of the year in which the request was made. Increases in such maximum amount are subject to the determination by the authority to make funds available therefor and shall be at the sole discretion of the authority.

In the event that the borrower had originally requested and received a home equity account in a maximum amount less than the maximum amount for which he was eligible under the schedule established pursuant to § 4.1 hereof, the authority may, at its option and upon the written request of the borrower, increase the maximum amount available under the home equity account up to the maximum amount for which the borrower would then be eligible. Such an increase may be granted at any time upon the request of the borrower and without a determination of a new assessed or appraised value, subject to the authority's determination to make funds available therefor and shall be at the sole discretion of the authority.

§ 4.3. Loan term.

The term of a home equity account loan shall not be a fixed period of time; provided, however, that the term of such loan shall in no event exceed 50 years. Such loan shall be due and payable upon the occurrence of any of the following events:

1. A sale or transfer (whether voluntary or involuntary) of the home or any interest therein (other than a transfer to a joint borrower) without the authority's prior written consent.

2. Failure by the borrower and, in the case of joint borrowers, all borrowers to occupy the home as his or their principal residence. Absence from the home for a period of more than 180 consecutive days, without the prior written consent of the authority, shall be deemed to be such a failure.

3. The use of the home, in whole or in part, for purposes other than as a principal residence without

the prior written consent of the authority.

4. Failure to pay the home equity balance in full within nine months after the death of the borrower or, in the case of joint borrowers, within nine months after the death of the last surviving borrower.

The home equity account loan may also be declared immediately due and payable in full, at the option of the authority, upon the occurrence of any of the acts of default set forth in § 4.7 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

§ 4.4. Interest rate and compounding.

The interest rate to be charged on equity payments disbursed under the program during any calendar year shall be established by the authority prior to January 1 of such year. Any such interest rate shall not apply to equity payments disbursed during prior calendar years. Interest shall be compounded on the first day of each month at the applicable interest rate.

The authority shall establish from time to time a maximum interest rate to be charged on home equity account loans closed subsequent to the establishment of such rate.

§ 4.5. Equity payments.

A borrower may from time to time request and receive equity payments under a home equity account, subject to the requirements and limitations set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

No scheduled equity payments shall be made to a borrower. The borrower is required to request and receive an initial equity payment at the time of closing of the home equity account in an amount of not less than $1,000 for any of the purposes set forth in § 5.3 hereof. Subsequent to the initial equity payment, the borrower may request and receive no more than one equity payment during a single calendar month, and each such equity payment must be in an amount of not less than $250.

All equity payments, other than the initial equity payment, shall be made to the borrower by the authority in the form of a check which will be mailed to the borrower's home.

The authority shall bill the borrower for payment of real property taxes and hazard insurance premiums as they become due. The borrower shall be obligated to submit payment to the authority within 30 days after the date of mailing. If payment is not so made, the authority, at its option, may pay property taxes and insurance premiums from the home equity account, to the extent not fully utilized, or may deem such nonpayment by the borrower to be an act of default under § 4.7 hereof.

§ 4.6. Repayments.

The borrower is not required to make any repayments of principal or interest on the home equity account loan until such time as the loan is due and payable as described in §§ 4.3 and 4.7 hereof. The borrower may, at his option, elect to prepay at any time the home equity account loan, in whole or in part, and any such prepayments shall be applied first to accrued interest and then to the outstanding principal amount of the home equity account loan.

§ 4.7. Acts of default.

The occurrence of any of the following events will constitute an act of default for which the home equity account loan shall, at the option of the authority, become immediately due and payable:

1. The imposition on the home or any part thereof of any lien or encumbrance (including mechanics' or tax liens) without the authority's prior written consent, if such lien or encumbrance may have priority over the lien of the home equity account loan or any prior or future equity payments thereunder and is not removed within 90 days.

2. Physical deterioration of the home beyond normal wear and tear and failure to repair, replace and maintain the various components of the home when required or necessary, including the failure to repair damage caused by fire or other casualty within a reasonable time after the occurrence as determined by the authority in its sole discretion.

3. Failure to make payment to the authority for taxes and insurance premiums as described in § 4.5 hereof.

4. A borrower's admission of his inability to pay his debts, making any assignment for the benefit of creditors or filing for relief under federal bankruptcy statutes. The filing of a petition in bankruptcy against the borrower without the borrower's consent will not be an act of default if the petition is dismissed within 60 days of filing.

5. Any omission or misrepresentation by the applicant in the application or in any equity payment request.

6. Any other occurrence which constitutes a default under the terms of the deed of trust securing the home equity account loan.

Upon default, the authority shall be entitled to exercise any one or more of the remedies set forth in the home equity account loan documents or available at law or in equity; provided, however, that, except in the case of a default as described in subdivisions 2 and 5 of this section, the authority shall not seek any personal judgment against the borrower but shall look solely to the home for payment of the home equity account loan.

§ 4.8. Term and extensions of home equity account.

The term during which the borrower shall have the right to request and receive equity payments under a home equity account shall be (i) five years, if the application shall be received prior to September 1, 1989; or (ii) such period of time as the executive director may establish prior to the closing thereof, if the application shall be received on or after September 1, 1989. The executive director may extend such term and any extensions thereof for such period of time and upon such terms and conditions as he may deem appropriate to accomplish the purposes of the program and to best utilize the resources of the authority. The expiration of such term or any extensions thereof shall not in any way affect the then existing principal balance of the home equity account loan or any accrued interest thereon.

§ 4.9. Repairs.

The authority shall have the right to inspect the home from time to time, to require the borrower to make such repairs as are determined by the authority to be necessary to maintain the home in good condition, and, if such repairs are not promptly made, to cause such repairs to be made and to disburse equity payments under the borrower's home equity account to the parties performing such repairs in amounts necessary to pay the costs thereof.

PART V.
REQUEST FOR AND USE OF HOME EQUITY ACCOUNT LOAN PAYMENTS.

§ 5.1. Requests for equity payments.

In order to receive an equity payment from the authority under a home equity account, the borrower must submit a request to the authority on a form prescribed by the authority. Such form must be completed and signed by the borrower and delivered to the authority by hand delivery or through the U.S. mail.

§ 5.2. Optional notification of third parties.

At closing, the applicant may, at his option, choose to participate in a voluntary third party notification system. Under this system, the applicant requests that the authority send notification by mail to a third party of his or her choice at least three days prior to the authority's making any equity payment to the applicant of $2,500 or greater. The notification letter shall state that the authority intends to make the equity payment and that such notification is being given to the third party at the request of the applicant. The authority shall make such payment to the applicant if the request is otherwise in compliance with these ~~procedures, instructions and guidelines~~ *rules and regulations* . Third party notification shall not apply to the applicant's initial equity payment at closing, but only to subsequent equity payments. It is the applicant's responsibility to give the authority an accurate address for the third party; to notify the authority in writing in order to terminate his participation in this notification program; to change his designated third party; or to notify the authority of a change in address for the third party. Nothing contained in this section shall be deemed (i) to impose any liability on the authority for failure to send any notification or (ii) to affect the validity of the equity payment, the obligation of the borrower to repay such equity payment, together with interest thereon, or the rights and remedies of the authority upon any act of default as set forth in § 4.7 hereof.

§ 5.3. Allowable use of funds.

All equity payments requested by borrowers shall be for purposes which are expressly permitted under these ~~procedures, instructions and guidelines~~ *rules and regulations* or which directly benefit the applicant and demonstrably contribute to enhancing their quality of life, especially their ability to continue to live independently. Such uses shall include, but shall not be limited to, home repairs and maintenance, real estate taxes and insurance, medical expenses (including in-home health care and medical insurance premiums), travel and normal living expenses which the applicant is unable to meet from other sources. Equity payments may not be used for any type of investment or commercial purposes, for the acquisition or construction of another residence, or for any purpose which primarily benefits someone other than the borrower. The authority shall have the right to deny any equity payment request which does not, in its sole discretion, comply with the provisions of this section.

PART VI.
APPLICATION AND PROCESSING.

§ 6.1. Application.

An interested applicant may obtain information about the program through any participating AAA. Informational material about the program may also be made available through senior centers and other agencies and organizations which provide services to the elderly.

If a prospective applicant wishes to submit an application, he shall do so through the local AAA or other organizations designated by the authority. The staff from the AAA will provide the applicant with an application form and will assist him or her in completing the application form. This form will contain any information which the authority deems necessary in order to determine the eligibility of the applicant and the home. This application must be signed and dated by the applicant.

The staff of the AAA will also provide program information to applicants as part of their normal agency responsibilities. Such information will include a description and explanation of the program. Applicants will be encouraged by the AAA to seek advice from others as well, including family members, attorneys and financial

advisors. The authority assumes no responsibility for the performance of such services by the AAA.

§ 6.2. AAA review.

Following completion of the application, the AAA staff shall undertake a preliminary review. The purpose of this review shall be to determine if the applicant and the home are eligible under these ~~procedures, instructions and guidelines~~ *rules and regulations* , subject to final review and approval by the authority. If on the basis of such review the AAA determines that the applicant or the home is not eligible, the applicant shall be so informed and his application shall be terminated. A copy of this application shall be retained by the AAA and provided to the authority upon its request.

Applications which meet all of the eligibility criteria in these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be forwarded to the authority for review and final approval.

§ 6.3. Authority review and commitment.

Upon receipt of the application, the authority shall review it to determine the eligibility of the applicant and the home. If the applicant and the home are eligible, then ~~the authority shall prepare a commitment to the applicant specifying the terms and requirements for closing the home equity account~~ *the executive director may issue, on behalf of the authority, a commitment to the applicant with respect to such home equity account subject to the approval or ratification thereof by the authority's board. The maximum amount available under the home equity account and the interest rate or rates to be charged thereon, the terms and conditions relating to repayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth in the commitment. Such maximum amount and interest rate may be subject to adjustment in the manner provided in these rules and regulations. Such commitment shall be issued only upon the determination of the authority that such a home equity account loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the commitment* . This commitment shall be mailed to the applicant with instructions that it must be executed and returned to the authority within such period of time as shall be specified therein. Failure to return the executed commitment agreement within such period of time shall result in the expiration of the commitment, unless the applicant has received a written extension from the authority.

The authority may, at its option, not approve an otherwise eligible application for any of the following reasons:

1. The application contains any untrue statement of a material fact or omits any material fact necessary to make the statement therein not misleading; or

2. The authority has determined that sufficient funds are not available for the program.

§ 6.4. Closing and fees.

If the commitment is signed by the applicant and returned to the authority within the requisite time period, the applicant and the authority shall establish a mutually acceptable place and date for the purpose of executing and delivering all necessary home equity account documents and such other documents as may be required under federal and state law.

At the time of closing, the authority shall collect from the applicant an application and commitment fee in the amount of $100. All other fees and charges associated with the closing, including title search, title insurance, legal fees, and recording costs, must be paid by the applicant. Such fees may, at the option of the applicant, be funded from the initial equity payment from the home equity account.

Subsequent to the closing, the home equity account and equity payments pursuant thereto shall be governed by the terms and conditions set forth herein and in the home equity account loan documents.

§ 6.5. Right to terminate program.

Home equity accounts may be financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor. Notwithstanding anything to the contrary herein, the authority shall have the right, at any time, to discontinue accepting new applications for home equity accounts. Such discontinuance shall not, however, affect the terms and conditions of any then existing home equity account.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to Preadmission Screening.**
VR 460-01-46. Utilization Control.
VR 460-02-4.141. Criteria for Nursing Home Preadmission Screening: Medicaid Eligible Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A
(Written Comments may be submitted until July 20, 1989. See Calendar of Events section for additional information.)

Summary:

These proposed regulations, once adopted as final, will regulate the administration of preadmission screening

requirements of all persons applying for nursing home admittance. These regulations conform to OBRA 1987 for persons having diagnoses of mental illness and mental retardation as well as to § 32.1-327.2 of Code of Virginia.

VR 460-01-46. Utilization Control.

Revision: HCFA PM 87-9 (BERC) ..... OMB No.: 0938-0193
August 1987

State ~~Territory~~ : Virginia

Citation	4.14 Utilization Control
42 CFR 431.630 42 CFR 456.2 50 FR 15312	A Statewide program of surveillance and utilization control has been implemented that safeguards against unnecessary or inappropriate use of Medicaid services available under this plan and against excess payments, and that assesses the quality of services. The requirements of 42 CFR Part 456 are met: ☒ Directly. Attachment 4.14 A contains the criteria for pre-admission screening and nursing home placement of MI/MR persons.
1902(a)(30)(C) and 1902(d) of the Act, P.L. 99-509 (Section 9431)	☐ By undertaking medical and utilization review requirements (including quality review requirements described in section 1902(a)(30)(C) of the Act relating to services furnished by HMOs under contract) through a contract with a Utilization and Quality Control Peer Review Organization (PRO) designated under 42 CFR Part 462. The contract with the PRO – (1) Meets the requirements of § 434.6(a); (2) Includes a monitoring and evaluation plan to ensure satisfactory performance; (3) Identifies the services and providers subject to PRO review; (4) Ensures that PRO review activities are not inconsistent with the PRO review of Medicare services; and (5) Includes a description of the extent to which PRO determinations are considered conclusive for payment purposes. ☐ Quality review requirements described in section 1902(a)(30)(C) of the Act relating to services furnished by HMOs under contract are undertaken through contract with the PRO designated under 42 CFR Part 462.
1902(a)(30)(C) and 1902(d) of the Act, P.L. 99-509 (Section 9431)	☐ By undertaking quality review of services furnished under each contract with an HMO through a private accreditation body.

VR 460-02-4.141. Criteria for Nursing Home Preadmission Screening: Medicaid Eligibile Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.

§ 1. Definitions.

"Active treatment for mental illness" means the implementation of an individual treatment that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness which necessitates supervision by trained mental health personnel. The active treatment plan is developed under and supervised by a physician and provided by a physician and other qualified mental health professionals.

"Active treatment for mental retardation" means a continuous program for each client, which includes aggressive, consistent implementation of specialized and generic training, treatment, health, and related services that are directed towards (i) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and (ii) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

"Community services board (CSB)" means the local governmental agency responsible for local mental health, mental retardation, and substance abuse services. Boards function as service providers, client advocates, and community educators.

"Cost effectiveness" means the determination that the Medicaid expenditure for an individual receiving home and community-based care services is equal to or less than the Medicaid expenditure would be for that individual to receive nursing home care.

"Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM IIIR)" means the 1980 publication of the American Psychiatric Association classifying diagnoses of abnormal behavior.

"DMAS-95 form" means the assessment tool used by nursing home preadmission screening committees and utilization review staff to assess an individual's medical, functional and social status, and document the justification for the need for nursing facility care and the appropriate level of care.

"Home and Community-Based Care Services" means Medicaid-funded long-term care services offered to Medicaid eligible elderly or physically disabled individuals in a home or community-based care setting in lieu of nursing home placement. These services must be preauthorized by either a nursing home preadmission screening committee or DMAS utilization review staff as a part of the nursing home preadmission screening process.

"Level I assessment" means the screening process (whether done by the nursing home preadmission screening committees, private practitioners or some other

entity contracted with DMAS) to identify those individuals who are in need of nursing facility care and who have a known or suspected diagnosis of mental illness or mental retardation (or related condition).

"Level II assessment process" means the evaluation of the need for active treatment for those individuals who are identified in Level I as needing nursing facility care and as having a condition of mental illness or mental retardation. For individuals who are Medicaid eligible or expected to become Medicaid eligible within 180 days, the CSBs or other entity authorized to complete Level II assessments will submit the required assessments to the state mental health or mental retardation authority which will decide whether or not active treatment is indicated. For private pay individuals, the nursing facility shall submit copies of the required evaluations to the state mental health or mental retardation authority. The state mental health or mental retardation authority shall decide whether or not active treatment is indicated and shall inform the nursing facility of the decision. Nursing facilities are prohibited from admitting any individual who is mentally ill or mentally retarded unless it has been determined that the individual requires the level of services provided by a nursing facility and does not require active treatment.

"Mental illness" means the existence of a diagnosis of a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM IIIR), limited to schizophrenic, paranoid, major affective, schizoaffective disorders, and atypical psychosis, and does not include a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

"Mental retardation and related conditions" means the existence of a level of retardation (mild, moderate, severe and profound) as described in the American Association on Mental Deficiency's Manual on Classification in Mental Retardation (1983) which states that "Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." The provisions of this section also apply to persons with "related conditions," meaning severe, chronic disabilities that meet all of the following conditions:

- *They are attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation because the related condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for those persons.*
- *They are manifested before the person reaches age 22.*
- *They are likely to continue indefinitely.*
- *They result in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.*

"MI/MR Supplemental Assessment" means the assessment form utilized by the nursing home preadmission screening committees in conjunction with the DMAS-95 form to identify those individuals who have been assessed to need nursing facility care and who have a known or suspected diagnosis of mental illness or mental retardation (or a related condition.)

"Nursing home preadmission screening committee" means either a local committee organized by the local health director or a committee established in a hospital setting for the purpose of determining whether an individual meets nursing facility criteria. Those committees organized by the local health director must be composed, at a minimum, of a physician, nurse, and social worker. The nurse and physician (both of whom must be licensed or eligible to be licensed) shall be employed by the local health department, and the social worker shall be employed from the adult services section of the local department of social services or the local health department. The committee, at the discretion of the local health director, may include representatives of other agencies which provide community services to aged and disabled individuals. Hospital committees are composed of a social worker or discharge planner and physician. If the discharge planner is not a nurse, collaboration with a registered nurse who is knowledgeable about the individual's medical needs is required prior to completion of the screening process. A mental health professional from the local community services board may also serve on the committee.

"Nursing Home Preadmission Screening Program" means a process to: (i) evaluate the medical, nursing, developmental, psychological, and social needs of each individual believed to be in need of nursing home admission; (ii) analyze what specific services the individual needs; and (iii) evaluate whether a service or a combination of existing community services is available to meet the individual's needs. An essential part of the assessment process is determining the level of care required by applying existing criteria for skilled and intermediate nursing home care.

"Plan of care" means the weekly schedule of services (home and community-based care and other formal and informal services) developed to meet the assessed needs of the individual in order to avoid nursing home placement. The plan of care must ensure the safety, health and welfare of the individual in order for home and community-based care services to be authroized.

"Private pay individuals" means persons who are not Medicaid eligible or are not expected to be Medicaid eligible within 180 days of admission to a nursing facility.

"State mental health or mental retardation authority" means the designated representative(s) of the Department of Mental Health, Mental Retardation and Substance Abuse Services who shall make active treatment decisions.

§ 2. Persons subject to nursing home preadmission screening and identification of conditions of mental illness and mental retardation.

A. As a condition of a nursing facility's Medicaid participation, all persons applying for admission to it shall be screened to determine whether they meet the criteria for nursing facility placement and whether conditions of mental illness and mental retardation (or related conditions) exist. Nursing facilities are responsible for ensuring that applicants for admission who are mentally ill, mentally retarded or have a related condition are not admitted until their determinations have been made under the screening process.

B. Beginning April 1, 1990, nursing facility residents shall be reviewed annually for conditions of mental illness or mental retardation.

§ 3. Preadmission screening assessment process.

A. Level I assessment.

1. For individuals who are Medicaid eligible or are expected to become Medicaid eligible within 180 days, the nursing home preadmission screening committee or other entity contracted by DMAS will complete the initial screening assessment to determine (i) the need for nursing facility services and (ii) whether or not the individual has a known or suspected diagnosis of mental illness or mental retardation (or a related condition). The DMAS-95 form and the MI/MR Supplemental Assessment will be used by the screening committees in making Level I assessments. Persons identified as possibly mentally ill or mentally retarded shall be referred for further diagnostic evaluation (Level II assessment) performed by the local community services board (CSB) or other entity contracted to complete Level II assessment.

2. For private pay individuals applying to enter a nursing facility, it will be the responsibility of the nursing facility to determine (i) the need for nursing facility services and (ii) whether or not the individual is or may be mentally ill or mentally retarded (or has a related condition). Persons identified as mentally ill or mentally retarded shall be referred to their private practitioners for further diagnostic evaluation.

B. Level II assessment.

1. For individuals who are Medicaid eligible or expected to be Medicaid eligible within 180 days, the entity completing the Level II assessment will refer any individual screened by Level I assessment who meets the nursing facility criteria and is suspected of having conditions of mental illness or mental retardation (or related conditions) for a Level II assessment. The CSB or other entity responsible for completing the Level II assessment will determine the individual's need for active treatment and the appropriate placement if active treatment is indicated. The criteria used in making a decision about appropriate placement are not, in any way, to be affected by the availability of placement alternatives. The state mental health or mental retardation authority shall decide whether or not active treatment is indicated, based on the Level II assessment recommendation. If active treatment for mental retardation or mental illness is required, the CSB or other responsible entity will arrange for the appropriate services to be provided and nursing facility services under Medicaid will be denied.

2. For those private pay individuals, the nursing facility will refer any individual suspected of having conditions of mental illness or mental retardation to a private practitioner to determine if there is a need for active treatment and the appropriate placement if active treatment is indicated. The criteria used in making a decision about appropriate placement are not, in any way, to be affected by the availability of placement alternatives. The nursing facility shall submit copies of the required evaluations to the Department of Mental Health, Mental Retardation and Substance Abuse Services which shall decide whether or not active treatment is indicated, based on the private practitioner's recommendation. If active treatment for mental retardation or mental illness is required, the Department of Mental Health, Mental Retardation and Substance Abuse Services shall notify the nursing facility that the individual may not be admitted to the nursing facility.

§ 4. Nursing home preadmission screening authorization.

At the completion of the nursing home preadmission screening assessment and evaluation, the nursing home preadmission screening committee (or DMAS utilization review staff or other authorized entity) must authorize the appropriate service level for the individual screened.

A. Referrals for services not required.

When it is determined that the individual does not need nursing facility care and is not in need of any other community services, the committee will not authorize any services for the individual.

B. Referrals to non-Medicaid-funded community services.

When it is determined that the individual does not need nursing facility care but requires some services in order to be adequately maintained in the community, the committee must make referrals to the appropriate agency and assure the individual and family understand how to access those community services.

C. Home and community-based care authorization.

When it is determined that the individual does need the type of care found in a nursing facility but could be maintained appropriately in the community with home and community-based care services, the committee must give the individual the choice of nursing home placement or home and community-based care services. In order to make the determination that home and community based care services can appropriately maintain the individual in the community, the nursing home preadmission screening committee must: (i) develop a plan of care for home and community-based care, (ii) determine the cost effectiveness of this plan of care, (iii) offer the individual a choice of home and community-based care providers, (iv) ensure provider availability to render services and make referrals for service initiation.

D. Nursing home authorization.

When the assessment process has been completed and it is determined that nursing facility care is needed and home and community-based care services are not considered an appropriate alternative, the authorization for nursing home placement can be made. The screening committee must make referrals for appropriate placement.

E. Referrals to state facilities for the mentally ill or mentally retarded.

When the screening committee, CSB and mental health authority determine that the individual meets nursing facility criteria and requires active treatment in a state facility for mental illness, mental retardation or related conditions, nursing home placement must not be authorized. Instead, the CSB will initiate placement proceedings.

ASSESSMENT PROCESS

NAME | HOME ADDRESS | TELEPHONE NUMBER

SUMMARY OF PROVIDERS

RECORD NUMBER	PROVIDER NAME	PROVIDER ADDRESS	TELEPHONE NUMBER	PROVIDER NUMBER	PROVIDER SOURCE	DATES OF ADMISSION	DATES OF DISCHARGE

BIRTHDATE (MONTH / DAY / YEAR)

BIRTHPLACE (SPECIFY STATE OR COUNTRY) ☐ USA 0 ☐ OTHER 1 _____

SEX ☐ MALE 3 ☐ FEMALE 1

MARITAL STATUS (Length of Time) ☐ MARRIED 0 ☐ SEPARATED 2 ☐ SINGLE 4 ☐ WIDOWED 1 ☐ DIVORCED 3 ☐ UNKNOWN 9

RELIGIOUS PREFERENCE
☐ CATHOLIC 0 ☐ OTHER 3, 8 _____
☐ JEWISH 1-SECT _____
☐ PROTESTANT 2—SECT _____

RACIAL/ETHNIC BACKGROUND
☐ AMERICAN INDIAN OR ALASKAN NATIVE 0
☐ ASIAN OR PACIFIC ISLANDER 1
☐ BLACK (NOT HISPANIC) 2
☐ HISPANIC 3
☐ WHITE (NOT HISPANIC) 4
☐ OTHER 5 _____

EDUCATION
☐ GRADUATE COLLEGE 0 ☐ ELEM. e/HIGH SCHOOL GRADES COMPLETED 5 _____
☐ UNDERGRADUATE COLLEGE Degree 1 or yrs. 2 _____ ☐ SPECIAL EDUCATION 7
☐ TRADE, TECHNICAL VOCATIONAL 3 ☐ NO SCHOOLING 8
☐ HIGH SCHOOL DIPLOMA 4 ☐ UNKNOWN 9

FAMILY INCOME
☐ $20,000 OR MORE 0 ☐ $3,600 - $4,999 4
☐ $15,000 - $19,999 1 ☐ $2,600 - $3,599 5
☐ $10,000 - $14,999 2 ☐ $2,599 OR LESS 6
☐ $5,000 - $9,999 3 ☐ UNKNOWN 9

HEALTH CARE COVERAGE
☐ MEDICARE 1 # _____
☐ MEDICAID 2 # _____
☐ OTHER 3 TYPE 4, 5 _____ #
☐ VETERAN 0 ☐ NON-VETERAN 1 ☐ UNKNOWN 9
SOCIAL SECURITY # _____

USUAL LIVING ARRANGEMENTS (ALONE 1 | SPOUSE 2 | OTHER 3 7)
☐ HOME/APARTMENT 0
☐ RENTED ROOM(S) 1
☐ DOMICILIARY/PERSONAL CARE FACILITY 20
☐ HEALTH CARE FACILITY 3 -TYPE 1,3 _____
☐ OTHER 40 _____

NUMBER OF LIVING CHILDREN _____
SON(S) _____ DAUGHTER(S) _____

EMPLOYMENT STATUS
☐ EMPLOYED 0 ☐ RETIRED 2
☐ PRE-RETIREMENT 1 ☐ PENSION 1
☐ POST-RETIREMENT 2, 3 ☐ NO PENSION 2
☐ UNEMPLOYED 10 ☐ NEVER EMPLOYED 30
☐ UNKNOWN 99

USUAL OCCUPATION
☐ HOMEMAKER 10 ☐ NONE 00
☐ OCCUPATION OUTSIDE THE HOME 2 SPECIFY 1, 2 _____

NONINSTITUTIONAL LIVING SPACE
☐ AVAILABLE 0 ☐ NOT AVAILABLE 1 ☐ NOT APPLICABLE 2

YES 0	NO 1	
		ENTRY STAIRS
		ELEVATOR OR OTHER CONVEYANCE AVAILABLE
		TOILET ROOM SAME FLOOR LEVEL AS BEDROOM
		KITCHEN SAME FLOOR LEVEL AS BEDROOM
		OTHER CONDITION

SOCIAL SUPPORT WILLING AND ABLE TO PROVIDE

	YES 1	NO 2	TIMES AVAILABLE
ACTIVITIES OF DAILY LIVING/ SUPERVISION			
HOUSEKEEPING			
LIVING SPACE			
MEAL PREPARATION			
SHOPPING			
TRANSPORTATION			
OTHER			

DIRECTORY OF HEALTH CARE PROFESSIONALS & OTHERS

UTILIZATION INFORMATION

NAME / ADDRESS / TELEPHONE NUMBER	DATES OF ASSESSMENT	TYPE OF SERVICE OR LEVEL OF CARE CURRENT 37	TYPE OF SERVICE OR LEVEL OF CARE RECOMMENDED 38	METHOD OF PAYMENT CURRENT 39	METHOD OF PAYMENT EXPECTED 40
REFERRING PHYSICIAN					
ATTENDING PHYSICIAN					
ALTERNATE PHYSICIAN					
DENTIST					
PODIATRIST					
PHARMACY					
FUNERAL HOME					
PERSON(S) TO BE NOTIFIED					
OTHER					

MEDICAL STATUS

CHECK BOXES WHICH APPLY. FILL IN SPACES AS INDICATED

	NO IMPAIRMENT 0	IMPAIRMENT (ATTEMPTED) 2 COMPENSATION 1 SPECIFY	NO COMPENSATION 3	COMPLETE LOSS 4	DATE OF CHANGE (IF ANY)
SIGHT			D		
HEARING			D		

SPEECH
☐ NO IMPAIRMENT 000
☐ IMPAIRMENT 1
☐ STRUCTURE OR MUSCULATURE OF VOCAL TRACT 2
TYPE _____
☐ LINGUISTIC SYSTEM 3
☐ COMPLETE LOSS 5
☐ DOES NOT SPEAK—NO KNOWN IMPAIRMENT 6

	PREVIOUS REHABILITATION COMPLETED 1 ONSET More Than 6 Months	PREVIOUS REHABILITATION COMPLETED 1 ONSET 6 Months Or Less	PREVIOUS REHABILITATION NOT COMPLETED 2 ONSET More Than 6 Months	PREVIOUS REHABILITATION NOT COMPLETED 2 ONSET 6 Months Or Less
	1	2	1	2
				D
				D

DENTITION

	COMPENSATION TYPE 1	COMPENSATION NONE 2	DATE OF CHANGE
☐ NO TEETH MISSING OR FEW TEETH MISSING 00			
☐ SOME OPPOSING TEETH 1		D	
☐ NO TEETH OR NO OPPOSING TEETH 2		D	

FRACTURES/DISLOCATIONS ☐ NONE 000

	LOCATION/ TREATMENT	PREVIOUS REHABILITATION PROGRAM YES 1	PREVIOUS REHABILITATION PROGRAM NO OR NOT COMPLETED 2	ONSET MORE THAN ONE YEAR 1	ONSET ONE YEAR OR LESS 2
HIP FRACTURE 1(S) 2			D		D
OTHER FRACTURE(S) 3					
DISLOCATION(S) 4					

MISSING LIMBS ☐ NONE 000

	LOCATION	PREVIOUS REHABILITATION PROGRAM YES 1	PREVIOUS REHABILITATION PROGRAM NO OR NOT COMPLETED 2	ONSET MORE THAN ONE YEAR 1	ONSET ONE YEAR OR LESS 2
FINGER(S) OR TOE(S) 1			D		
BELOW ELBOW 2			D		
ABOVE ELBOW 3			D		
BELOW KNEE 4			D		
ABOVE KNEE 5			D		

PARALYSIS/PARESIS ☐ NONE 000

	LOCATION	PREVIOUS REHABILITATION PROGRAM YES 1	PREVIOUS REHABILITATION PROGRAM NO OR NOT COMPLETED 2	ONSET MORE THAN ONE YEAR 1	ONSET ONE YEAR OR LESS 2
MONOPLEGIA/ PARESIS 1			D		D
HEMIPLEGIA/ PARESIS 2			D		D
PARAPLEGIA/ PARESIS 3			D		D
TRIPLEGIA/ PARESIS 4			D		D
BILATERAL HEMIPLEGIA/PARESIS 5			D		D
QUADRIPLEGIA/ PARESIS 6			D		D

ALLERGIES—SPECIFY H-ICDA CODE

NAME OR NUMBER

DIAGNOSES

	H-ICDA CODE	DATE OF ONSET 0, 8

RISK FACTOR MEASUREMENTS/OTHER TESTS

CIGARETTE SMOKING
☐ NEVER SMOKED 00 ☐ DOES NOT SMOKE: HISTORY UNKNOWN 10
☐ EX-SMOKER 2 SMOKES 3—4 PER DAY _____ 1, 3

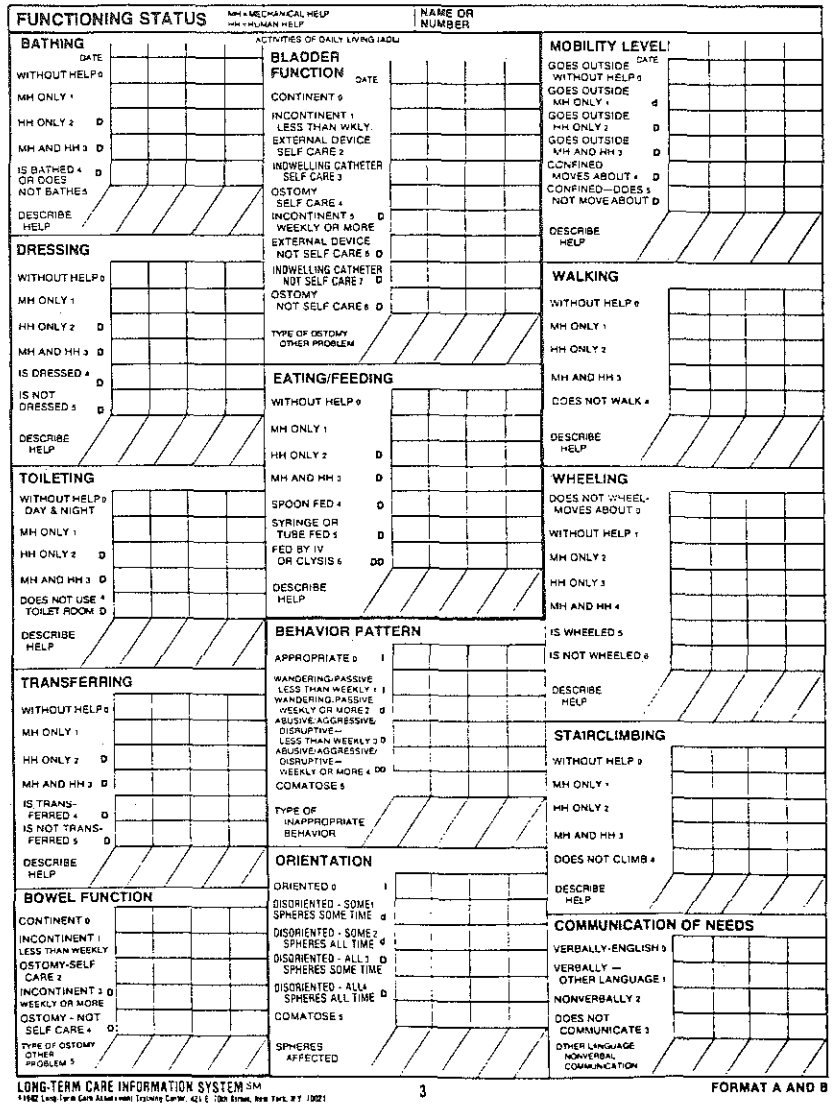
	RECORD DATE AND READING			
HEIGHT				
WEIGHT IDEAL _____				
BLOOD PRESSURE				
BLOOD CHOLESTEROL				
BUN				
ALBUMINURIA				
BLOOD SUGAR-SPECIFY TEST				
HEMOGLOBIN OR HEMATOCRIT				
DIG. LEVEL SPECIFY TEST				
PROTHROMBIN TIME				
SERUM POTASSIUM				
CHEST X-RAY 1, 2 OTHER				

JOINT MOTION SPECIFY JOINTS AFFECTED

	DATE			
WITHIN NORMAL LIMITS 0				
LIMITED MOTION 1				
INSTABILITY—CORRECTED 2				
INSTABILITY—UNCORRECTED 3				
IMMOBILITY 4				

MEDICAL HISTORY H-ICDA CODE

FAMILY HISTORY H-ICDA CODE



FUNCTIONING STATUS
MH = MECHANICAL HELP
HH = HUMAN HELP
NAME OR NUMBER
ACTIVITIES OF DAILY LIVING (ADL)

BATHING
DATE
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2 D
MH AND HH 3 D
IS BATHED 4 OR DOES NOT BATHE 5 D
DESCRIBE HELP

DRESSING
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2 D
MH AND HH 3 D
IS DRESSED 4 D
IS NOT DRESSED 5 D
DESCRIBE HELP

TOILETING
WITHOUT HELP 0 DAY & NIGHT
MH ONLY 1
HH ONLY 2 D
MH AND HH 3 D
DOES NOT USE 4 TOILET ROOM D
DESCRIBE HELP

TRANSFERRING
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2 D
MH AND HH 3 D
IS TRANSFERRED 4 D
IS NOT TRANSFERRED 5 D
DESCRIBE HELP

BOWEL FUNCTION
CONTINENT 0
INCONTINENT 1 LESS THAN WEEKLY
OSTOMY-SELF CARE 2
INCONTINENT 3 WEEKLY OR MORE D
OSTOMY - NOT SELF CARE 4 D
TYPE OF OSTOMY OTHER PROBLEM 5

BLADDER FUNCTION
DATE
CONTINENT 0
INCONTINENT 1 LESS THAN WKLY.
EXTERNAL DEVICE SELF CARE 2
INDWELLING CATHETER SELF CARE 3
OSTOMY SELF CARE 4
INCONTINENT 5 WEEKLY OR MORE D
EXTERNAL DEVICE NOT SELF CARE 6 D
INDWELLING CATHETER NOT SELF CARE 7 D
OSTOMY NOT SELF CARE 8 D
TYPE OF OSTOMY OTHER PROBLEM

EATING/FEEDING
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2 D
MH AND HH 3 D
SPOON FED 4 D
SYRINGE OR TUBE FED 5 D
FED BY IV OR CLYSIS 6 DD
DESCRIBE HELP

BEHAVIOR PATTERN
APPROPRIATE 0 I
WANDERING-PASSIVE LESS THAN WEEKLY 1 I
WANDERING-PASSIVE WEEKLY OR MORE 2 d I
ABUSIVE/AGGRESSIVE/DISRUPTIVE—LESS THAN WEEKLY 3 D
ABUSIVE/AGGRESSIVE/DISRUPTIVE—WEEKLY OR MORE 4 DD
COMATOSE 5
TYPE OF INAPPROPRIATE BEHAVIOR

ORIENTATION
ORIENTED 0 I
DISORIENTED - SOME SPHERES SOME TIME 1 d I
DISORIENTED - SOME SPHERES ALL TIME 2 d I
DISORIENTED - ALL SPHERES SOME TIME 3 D
DISORIENTED - ALL SPHERES ALL TIME 4 D
COMATOSE 5
SPHERES AFFECTED

MOBILITY LEVEL
DATE
GOES OUTSIDE WITHOUT HELP 0
GOES OUTSIDE MH ONLY 1 d
GOES OUTSIDE HH ONLY 2 D
GOES OUTSIDE MH AND HH 3 D
CONFINED MOVES ABOUT 4 D
CONFINED—DOES NOT MOVE ABOUT 5 D
DESCRIBE HELP

WALKING
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2
MH AND HH 3
DOES NOT WALK 4
DESCRIBE HELP

WHEELING
DOES NOT WHEEL-MOVES ABOUT 0
WITHOUT HELP 1
MH ONLY 2
HH ONLY 3
MH AND HH 4
IS WHEELED 5
IS NOT WHEELED 6
DESCRIBE HELP

STAIRCLIMBING
WITHOUT HELP 0
MH ONLY 1
HH ONLY 2
MH AND HH 3
DOES NOT CLIMB 4
DESCRIBE HELP

COMMUNICATION OF NEEDS
VERBALLY-ENGLISH 0
VERBALLY — OTHER LANGUAGE 1
NONVERBALLY 2
DOES NOT COMMUNICATE 3
OTHER LANGUAGE NONVERBAL COMMUNICATION

LONG-TERM CARE INFORMATION SYSTEM SM
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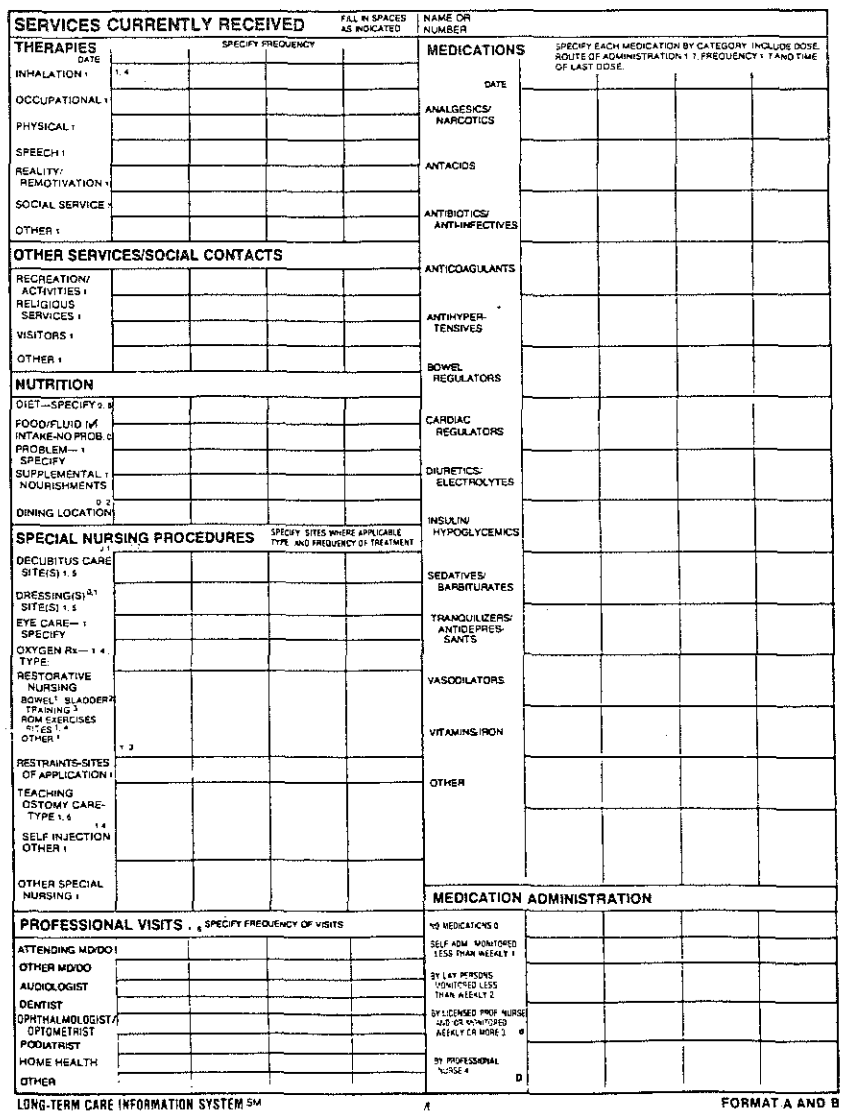
FORMAT A AND B



SERVICES CURRENTLY RECEIVED
FILL IN SPACES AS INDICATED
NAME OR NUMBER

THERAPIES
DATE
SPECIFY FREQUENCY
INHALATION 1 4
OCCUPATIONAL 1
PHYSICAL 1
SPEECH 1
REALITY/REMOTIVATION 1
SOCIAL SERVICE 1
OTHER 1

OTHER SERVICES/SOCIAL CONTACTS
RECREATION/ACTIVITIES 1
RELIGIOUS SERVICES 1
VISITORS 1
OTHER 1

NUTRITION
DIET—SPECIFY 0 8
FOOD/FLUID INTAKE-NO PROB. 0
PROBLEM—1 SPECIFY
SUPPLEMENTAL NOURISHMENTS 1
DINING LOCATION 0 2

SPECIAL NURSING PROCEDURES
SPECIFY SITES WHERE APPLICABLE TYPE AND FREQUENCY OF TREATMENT
DECUBITUS CARE SITE(S) 1 5
DRESSING(S) SITE(S) 1 5
EYE CARE—1 SPECIFY
OXYGEN Rx—1 4 TYPE:
RESTORATIVE NURSING
BOWEL 1 BLADDER 2 TRAINING 3
ROM EXERCISES SITES 1 4
OTHER 1
RESTRAINTS-SITES OF APPLICATION 1
TEACHING OSTOMY CARE-TYPE 1 6
SELF INJECTION OTHER 1
OTHER SPECIAL NURSING 1

PROFESSIONAL VISITS . . . SPECIFY FREQUENCY OF VISITS
ATTENDING MD/DO 1
OTHER MD/DO
AUDIOLOGIST
DENTIST
OPHTHALMOLOGIST/OPTOMETRIST
PODIATRIST
HOME HEALTH
OTHER

MEDICATIONS
SPECIFY EACH MEDICATION BY CATEGORY. INCLUDE DOSE, ROUTE OF ADMINISTRATION 1 7, FREQUENCY 1 7 AND TIME OF LAST DOSE.
DATE
ANALGESICS/NARCOTICS
ANTACIDS
ANTIBIOTICS/ANTI-INFECTIVES
ANTICOAGULANTS
ANTIHYPERTENSIVES
BOWEL REGULATORS
CARDIAC REGULATORS
DIURETICS/ELECTROLYTES
INSULIN/HYPOGLYCEMICS
SEDATIVES/BARBITURATES
TRANQUILIZERS/ANTIDEPRESSANTS
VASODILATORS
VITAMINS/IRON
OTHER

MEDICATION ADMINISTRATION
NO MEDICATIONS 0
SELF ADM. MONITORED LESS THAN WEEKLY 1
BY LAY PERSONS MONITORED LESS THAN WEEKLY 2
BY LICENSED PROF. NURSE AND OR MONITORED WEEKLY OR MORE 3 d
BY PROFESSIONAL NURSE 4 D

LONG-TERM CARE INFORMATION SYSTEM SM
4
FORMAT A AND B

TRANSLATION TO SERVICE NEEDS

NAME OR NUMBER

1. RECORD THE DATE OF ASSESSMENT
2. MATCH THE ASSESSED STATUS RECORDED AS d, D, OR DD IN THE COMPLETED ASSESSMENT WITH THE SAME ITEMS IN THE ASSESSED STATUS COLUMN BELOW. CHECK THE SERVICE(S) NEXT TO EACH MATCHED ITEM UNDER THE DATE OF ASSESSMENT
3. MATCH THE ASSESSED STATUS FOR BEHAVIOR PATTERN WITH THAT OF ORIENTATION AND CHECK THE CORRESPONDING SERVICE AS NEEDED. IF THE ASSESSED STATUS IS "I" FOR BEHAVIOR AND ORIENTATION, NO SERVICE IS CHECKED AS NEEDED

ASSESSED STATUS (DATE)	SERVICE NEEDS 1	✓ OR SPECIFY IF CHANGE OCCURS. RECORD DATE AND CHANGE: SOCIAL SUPPORT 1	SERVICE PROVIDER	AT REASSESSMENT, DATE AND ✓ IF SERVICE RECEIVED 1
NON-INSTITUTIONAL LIVING SPACE D Not Available	HOMEFINDING SERVICE			
SIGHT D IMPAIRMENT — NO (ATTEMPTED) COMPENSATION	OPHTHALMOLOGY/OPTOMETRY			
HEARING D IMPAIRMENT — NO (ATTEMPTED) COMPENSATION	AUDIOLOGY			
SPEECH D IMPAIRMENT SIX MONTHS AGO OR LESS — THERAPY NOT COMPLETED	SPEECH THERAPY			
DENTITION D SOME OR NO OPPOSING TEETH — NO COMPENSATION	DENTAL SERVICE			
FRACTURED HIP(S) DD — ONE YEAR AGO OR LESS AND REHABILITATION NOT COMPLETED PARALYSIS/PARESIS DD MISSING LIMBS D REHABILITATION NOT COMPLETED JOINT MOTION INSTABILITY UNCORRECTED OR IMMOBILITY D	PHYSICAL THERAPY			
LIMITED MOTION d EATING/FEEDING DD FED BY I.V. OR CLYSIS MEDICATION ADMINISTRATION SOME OR ALL BY PROFESSIONAL NURSE D	PROFESSIONAL NURSING			
BY LICENSED OR PROFESSIONAL NURSE d	LICENSED OR PROFESSIONAL NURSING			
ACTIVITIES OF DAILY LIVING ADL: BATHING, DRESSING, TOILETING, TRANSFERRING, BOWEL FUNCTION, BLADDER FUNCTION, EATING/FEEDING D FOR 5, 6, OR 7 ADL	MEAL PREPARATION			
	HOUSEKEEPING			
d FOR 2, 3, 4, 5, 6, OR 7 ADL	ADL OR SUPERVISION BY LAY PERSONS OR AIDES			
BEHAVIOR PATTERN / ORIENTATION I-APPROPRIATE OR WANDERING/PASSIVE LESS THAN WEEKLY AND d-DISORIENTED SOME SPHERES d-WANDERING/PASSIVE WEEKLY OR MORE AND I-ORIENTED				
I-APPROPRIATE OR WANDERING/PASSIVE LESS THAN WEEKLY AND D-DISORIENTED ALL SPHERES d-WANDERING/PASSIVE WEEKLY OR MORE AND d D-DISORIENTED SOME OR ALL SPHERES D-ABUSIVE/AGGRESSIVE DISRUPTIVE LESS THAN WEEKLY AND I, ORIENTED d, OR D DISORIENTED	EMOTIONAL AND SOCIAL ASSESSMENT SERVICES			
DD-ABUSIVE/AGGRESSIVE/DISRUPTIVE WEEKLY OR MORE AND I, ORIENTED d, OR D DISORIENTED	EMOTIONAL AND SOCIAL TREATMENT SERVICES			
MOBILITY LEVEL d, D GOES OUTSIDE WITH HELP OR DOES NOT GO OUTSIDE	SHOPPING			
OTHER SERVICE NEEDS				

ADDITIONAL INFORMATION/PLAN

PREFERENCES ☐ NONE
FOOD 1 | ACTIVITIES/HOBBIES/INTERESTS 2 | OTHER 3

REASON FOR REFERRAL/DISCHARGE

IF DECEASED[1] CAUSE OF DEATH — H-ICDA CODE DATE

PHYSICIAN'S SIGNATURE

PHYSICIAN'S ORDERS FOR CARE

NAME OR NUMBER

PHYSICIAN'S SIGNATURE — DATE — DATE OF NEXT VISIT

I ( ) CERTIFY ( ) RECERTIFY THAT ( ) SKILLED ( ) INTERMEDIATE NURSING CARE ( ) OTHER PROFESSIONAL SERVICES ARE REQUIRED BY THE BENEFICIARY ( ) ON AN IN-PATIENT BASIS OR ( ) ON AN INTERMITTENT BASIS FOR A BENEFICIARY CONFINED TO THE HOME, FOR CONDITION(S) ELIGIBLE FOR PRESUMED COVERAGE AS DESIGNATED IN THE ( ) MEDICARE ( ) MEDICAID REGULATIONS. THE ABOVE PATIENT IS UNDER CARE AND AN ESTABLISHED PLAN OF CARE WILL BE REVIEWED BY ( ) ME OR ( ) ______ AT LEAST EVERY ______ MONTHS.

PROGNOSIS REHABILITATION POTENTIAL — PHYSICIAN'S SIGNATURE — DATE

PHYSICIAN'S SIGNATURE — DATE — DATE OF NEXT VISIT

I ( ) CERTIFY ( ) RECERTIFY THAT ( ) SKILLED ( ) INTERMEDIATE NURSING CARE ( ) OTHER PROFESSIONAL SERVICES ARE REQUIRED BY THE BENEFICIARY ( ) ON AN IN-PATIENT BASIS OR ( ) ON AN INTERMITTENT BASIS FOR A BENEFICIARY CONFINED TO THE HOME, FOR CONDITION(S) ELIGIBLE FOR PRESUMED COVERAGE AS DESIGNATED IN THE ( ) MEDICARE ( ) MEDICAID REGULATIONS. THE ABOVE PATIENT IS UNDER CARE AND AN ESTABLISHED PLAN OF CARE WILL BE REVIEWED BY ( ) ME OR ( ) ______ AT LEAST EVERY ______ MONTHS.

PROGNOSIS REHABILITATION POTENTIAL — PHYSICIAN'S SIGNATURE — DATE

PHYSICIAN'S SIGNATURE — DATE — DATE OF NEXT VISIT

I ( ) CERTIFY ( ) RECERTIFY THAT ( ) SKILLED ( ) INTERMEDIATE NURSING CARE ( ) OTHER PROFESSIONAL SERVICES ARE REQUIRED BY THE BENEFICIARY ( ) ON AN IN-PATIENT BASIS OR ( ) ON AN INTERMITTENT BASIS FOR A BENEFICIARY CONFINED TO THE HOME, FOR CONDITION(S) ELIGIBLE FOR PRESUMED COVERAGE AS DESIGNATED IN THE ( ) MEDICARE ( ) MEDICAID REGULATIONS. THE ABOVE PATIENT IS UNDER CARE AND AN ESTABLISHED PLAN OF CARE WILL BE REVIEWED BY ( ) ME OR ( ) ______ AT LEAST EVERY ______ MONTHS

PROGNOSIS REHABILITATION POTENTIAL — PHYSICIAN'S SIGNATURE — DATE

PHYSICIAN'S SIGNATURE — DATE — DATE OF NEXT VISIT

I ( ) CERTIFY ( ) RECERTIFY THAT ( ) SKILLED ( ) INTERMEDIATE NURSING CARE ( ) OTHER PROFESSIONAL SERVICES ARE REQUIRED BY THE BENEFICIARY ( ) ON AN IN-PATIENT BASIS OR ( ) ON AN INTERMITTENT BASIS FOR A BENEFICIARY CONFINED TO THE HOME, FOR CONDITION(S) ELIGIBLE FOR PRESUMED COVERAGE AS DESIGNATED IN THE ( ) MEDICARE ( ) MEDICAID REGULATIONS. THE ABOVE PATIENT IS UNDER CARE AND AN ESTABLISHED PLAN OF CARE WILL BE REVIEWED BY ( ) ME OR ( ) ______ AT LEAST EVERY ______ MONTHS.

PROGNOSIS REHABILITATION POTENTIAL — PHYSICIAN'S SIGNATURE — DATE

ADDITIONAL COMMENTS/JUSTIFICATIONS/RECOMMENDATIONS/DECISIONS

SIGNATURE	SIGNATURE	SIGNATURE	SIGNATURE
AFFILIATION	AFFILIATION	AFFILIATION	AFFILIATION

LONG-TERM CARE INFORMATION SYSTEM SM — 6 — FORMAT A AND P

NURSING HOME PRE-ADMISSION SCREENING AUTHORIZATION

Please provide appropriate answer by either filling in the space or putting the correct number in the box provided.

Name: _____

Social Security Number: _____ Medicaid Number: _____

° If no Medicaid number now, is it anticipated that the individual will be financially Medicaid eligible within 180 days of nursing home?

Yes = 1 No = 0 Currently Medicaid eligible = 8 [ ]

* Has individual formally applied for Medicaid? Yes = 1 No = 0 [ ]

Dept. of Social Services _____
(Eligibility Responsibility) (Services Responsibility)

NURSING HOME APPLICATION
Has the Individual made formal application to a nursing home? [ ]
1 = Yes
0 = No
2 = Plans to apply
3 = Is currently a nursing home resident

MEDICAID AUTHORIZATION
[ ]
1 = Nursing Home/Skilled
2 = Nursing Home/Intermediate
3 = Personal Care/Skilled
4 = Personal Care/Intermediate
5 = Adult Day Health Care (ADHC)
6 = ADHC + Personal Care
7 = Respite Care
8 = Other Services Recommended
9 = None

COMMUNITY-BASED CARE REFUSED
This section refers only to those individuals who were offered personal care and refused. [ ]
1 = Patient/Family not interested
2 = Could not afford patient pay
3 = Other: _____
2 = Could not afford patient pay
3 = Other: _____
9 = Not Applicable

COMMUNITY-BASED CARE NOT OFFERED
This section is to be completed when Personal Care/ADHC is not offered. [ ]
1 = Did not meet level of care criteria
2 = Appropriate Plan of Care could not be developed
3 = Plan of Care not cost effective
4 = No provider agency available
9 = Not Applicable

LENGTH OF STAY (If approved for Nursing Home) [ ]
1 = Temporary (expected to return home in less than 3 months)
2 = Temporary (expected to return home in less than 6 months)
3 = Continuing (more than 6 months)
8 = Not Applicable

SCREENING IDENTIFICATION/PHYSICIAN'S CERTIFICATION
* Name of hospital and provider number:
_____
[ ][ ][ ][ ][ ][ ][ ][ ][ ]
* Name of health department and provider number:
_____
[ ][ ][ ][ ][ ][ ][ ][ ][ ]
* Social Service City/County Code: [ ][ ][ ]
(put "0's" if Dept. of Social Services did not participate)

This authorization, and Community-Based Care Plan of Care (DMAS-97) if Community-Based Care is authorized, is appropriate to adequately meet the recipient's needs and assures that all other resources have been explored prior to Medicaid authorization for this recipient.

_____ R.N., Date _____

_____ S.W., Date _____

_____ M.D., Date _____

° Since the Pre-Admission Screening Decision has the individual expired? 1 = Yes 0 = No [ ]

COMMUNITY-BASED CARE AGENCY OR NURSING HOME
Name of Nursing Home/Community-Based Care Provider Chosen _____

DMAS-96

SCREENING TEAM PLAN OF CARE

A. INDIVIDUAL'S TOTAL CARE NEEDS Name: _____

Total Service Needs	SERVICE NEEDS: Total Time	x	Days/ Week	=	Weekly Total	SERVICES PROVIDED BY: Family/ Other	Specify Caregiver	Personal Care	Adult Day Health Care
1. ADL's	____	x	____	=	____	____	____	____	____
2. Housekeeping	____	x	____	=	____	____	____	____	N/A
3. Meal Preparation	____	x	____	=	____	( )	____	( )	____
4. Shopping	____	x	____	=	____	____	____	____	N/A
5. Laundry	____	x	____	=	____	____	____	____	N/A
6. Transportation (specify frequency)						____	____	N/A	____
7. Supervision ___ (if yes, enter 168 on line 9)						____	____	____	____
8. Skilled Medical Needs _____ (Type and Frequency)						____	____	N/A	____
9. TOTAL NEEDS				=		Family/ Other	TOTAL CARE +	Personal Care days hrs	Adult Day Health Care days hrs

10. Primary Caregiver: _____ _____
(Name) (Phone#)

B. COST-EFFECTIVENESS STUDY AND STATEMENT OF UNDERSTANDING

1. Nursing Home Care:
a. Nursing Home - SNF _____
Nursing Home - ICF _____
b. Patient Pay _____
c. Cost to Medicaid _____

Personal Care can only be offered if "j" or "s" or "j+s" is equal to or less than "c".

2. Personal Care:
d. Hours per week _____
e. Multiplied x 4.33
f. Hours per month _____
g. x P.C. rate _____
h. Total Cost _____
i. Patient Pay _____
j. Cost to Medicaid _____

3. Adult Day Health Care
k. Units per week _____
l. Multiplied x 4.33
m. Units per month _____
n. x ADHC rate = _____
o. # Trips/month _____
p. x Rate/trip = _____
q. Total Cost (n+p) _____
r. Patient Pay _____
s. Cost to Medicaid _____

3. Patient Pay Information obtained from _____ _____
(Eligibility Worker's Name) (Phone Number)

4. I, _____ (Recipient), understand that in order for Community-Based Care to be offered instead of nursing home, the cost to Medicaid for Community-Based Care must be equal to or less than the cost to Medicaid for nursing home care. The Pre-Admission Screening team has determined that the above Plan of Care is cost effective and appropriate to meet my needs. I understand that Medicaid will not authorize Community-Based Care to continue if my total Plan of Care does not adequately meet my health and safety needs. Staff from the provider agency will develop a daily Plan of Care not to exceed _____ weekly hours Personal Care or _____ days per week ADHC as authorized above.

C. FREEDOM OF CHOICE

In accordance with the policies and procedures of the Department of Medical Assistance Services I have been informed by _____ Pre-Admission Screening
(Name of City/County or Hospital)
Committee/team of the Medicaid-funded, long-term care options available to me and I choose:

[ ] Personal Care Service [ ] Adult Day Health Care [ ] Nursing Home

I have been given a choice of the available Community-Based Care provider agencies and my choice is _____
(Name of Personal Care Provider Agency)

_____ _____
(Preparer's Signature) (Recipient/Family Signature) (Rel.)

RESPITE CARE NEEDS ASSESSMENT AND PLAN OF CARE

A. NAME _____ MEDICAID NO. _____

B. PRIMARY CAREGIVER _____ RELATIONSHIP TO CLIENT _____

C. STRESSORS: Describe factors that create a need for Respite Care.

LACK OF ADDITIONAL SUPPORT _____

OTHER DEPENDENTS _____

24-HOUR SUPERVISION REQUIRED _____

ILLNESSES/LIMITATIONS _____

OTHER _____

D. AMOUNT AND TYPE OF RESPITE CARE NEEDED

REASON RESPITE CARE REQUESTED _____

____ ROUTINE HOURS PER DAY ____ DAYS NEEDED _____
____ EPISODIC HOURS PER DAY ____ SPECIFY DATES NEEDED _____

CARE MUST BE PROVIDED BY LPN ___NO ___YES Describe Skilled Needs _____

E. MONTHLY COST-EFFECTIVENESS STUDY AND STATEMENT OF UNDERSTANDING

1. NURSING HOME CARE:
   a. Nursing Home - SNF $_____
      Nursing Home - ICF $_____
   b. Patient Pay (Subtract) $_____
   c. Cost to Medicaid $_____

2. RESPITE CARE:
   d. Amount of Service (hours/days) _____
   e. X Rate (per diem/per hour) $_____
   f. Total Cost $_____
   g. Patient Pay (subtract) $_____
   h. Cost to Medicaid of Respite $_____
   i. Cost to Medicaid of other CBC $_____
   j. Total CBC Medicaid Cost $_____

PATIENT PAY INFORMATION OBTAINED FROM _____ _____
Eligibility Worker's Name Phone Number

F. FREEDOM OF CHOICE

In accordance with the policies and procedures of the Department of Medical Assistance Services I have been informed by _____ Pre-Admission Screening
Name of City/County or Hospital
team of the Medicaid-funded, long-term care options available to me and I choose:

|__| Respite Care Service |__| Nursing Home Placement

I have been given a choice of the available Respite Care Provider agencies and my choice is _____. I understand that only the amount of Respite Care authorized above can be offered. In order to receive Respite Care instead of nursing home care, I understand that the cost to Medicaid for Respite Care (and any additional Medicaid-funded Home and Community-Based Care services) must be equal to or less than the cost to Medicaid for nursing home care . The Pre-Admission Screening team has determined that the above Plan of Care is cost-effective, appropriate to meet my health and safety needs and necessary to avoid nursing home care.

_____ _____
PHYSICIAN SIGNATURE DATE

_____ _____
RECIPIENT/FAMILY SIGNATURE DATE

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Consent for Release of Information

I hereby give the Virginia Department of Medical Assistance Services (DMAS), Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Community Services Boards (CSB) permission to obtain medical and personal information to assess _____ need for long-term care services.

I understand that these entities will keep this information and take reasonable steps in accordance with law to safeguard the confidentiality of medical and personal records.

I understand that under the Virginia Privacy Protection Act of 1976 I have the right to inspect, correct, or complete this information.

I understand that if I do not provide the information requested, the option of receiving nursing home care in a Medicaid-certified facility or Home and Community-Based Waiver services as a Medicaid recipient may not be given.

I understand that the information requested is necessary to complete an assessment of needs and develop an appropriate plan of long-term care services and, pursuant to a determination of Medicaid eligibility, to authorize Medicaid payment.

These rights and responsibilities have been read by or explained to me and I understand them.

_____
Print name of applicant or applicant's authorized representative

_____ _____
Signature of applicant or applicant's authorized representative Date

_____
Representative's relationship to applicant (parent, guardian, power of attorney)

_____ _____
Witness, if signed by mark Date

_____ _____
Signature of screening authority (registered nurse, social worker, or physician) Date

DMAS-20, Effective Date January 1, 1989

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

CHILD DAY-CARE COUNCIL

Title of Regulation: VR 175-04-01. Criminal Record Checks.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

This regulation establishes the criminal record check procedures that employees and volunteers of a child care center must follow. The regulation includes the following topics:

Individuals required to obtain certificates, routing of certificates, validity of certificates, duplicate certificates, and maintenance and responsibility of certificates by facilities.

VR 175-04-01. Criminal Record Checks.

PART I.
INTRODUCTION.

Article 1.
Definitions.

§ 1.1. The following words and terms when used in conjunction with this regulation shall have the following meaning:

"Affirmation of sworn disclosure statement" means that portion of the certificate obtained from the Department of Social Services affirming that the individual has met the requirement of completing, signing and submitting such a statement.

"Applicants for licensure" means all agents of a child care center including owners, partners or officers of the governing board of a corporation or association, who have applied for licensure.

"Barrier crimes" means certain crimes which automatically act as barriers to employment at child care centers. These crimes, as specified by § 63.1-198.1 of the Code of Virginia, are as follows: murder; abduction for immoral purposes; sexual assault; failing to secure medical attention for an injured child; pandering; crimes against nature involving children; taking indecent liberties with children; neglect of children; and obscenity offenses.

"Central criminal records exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police through which the criminal history record request form is processed.

"Certificate" means the clearance document issued by the Commissioner of the Department of Social Services verifying that (i) a criminal history record search has been conducted for a particular individual through the Department of State Police, (ii) no convictions have been found of any offense pursuant to those referenced in § 63.1-198.1 of the Code of Virginia and, if indicated, (iii) a sworn disclosure statement has been completed and submitted as required in § 63.1-198.1 of the Code of Virginia.

"Criminal history record request" means the Department of Social Services form to be submitted to the Department of State Police identifying the individual for whom clearance needs to be established. This form also includes the requirement for a sworn disclosure statement and must be completed and signed by the same individual for whom clearance is being requested.

"Duplicate certificate" means that an additional certificate is required for an individual. This may be necessary when an employee or volunteer is involved concurrently at more than one facility. An example would be when an individual is working intermittently at different facilities as a substitute or part time employee or, when someone contracts his services at more than one facility, such as a music or dance specialist. Another need for a duplicate certificate occurs when a certificate is lost or misplaced.

"Employee" means all personnel hired at a facility regardless of role, service, age, function or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility.

"Facility" means a child care center as defined in § 63.1-195 of the Code of Virginia and subject to licensure by the Department of Social Services.

"Officer of the board" means anyone holding an office on the board of the facility and responsible for its operation in any manner.

"Sworn disclosure statement" means that portion of the criminal history record request form to be completed, signed, notarized and submitted by the individual for whom clearance is being requested. This portion indicates that the individual has neither a conviction nor pending

charges in, or outside, the Commonwealth of Virginia of those crimes which act as barriers to employment at the indicated facilities. This is required as specified in § 63.1-198.1 of the Code of Virginia.

"Volunteer" means anyone who at any time would be alone with, in control of, or supervising one or more children outside the physical presence of a paid facility staff member. This pertains to all activities occurring at the facility location or sponsored by the licensed facility. This also includes volunteer staff counted for purposes of maintaining required ratios for the appropriate program.

Article 2.
Individuals Required to Obtain Certificates.

§ 1.2. Sections 63.1-198 and 63.1-198.1 of the Code of Virginia require all employees, volunteers and applicants for licensure of a child care center to obtain a certificate of clearance and affirmation of sworn disclosure statement (one document) from the Department of Social Services.

Exception: (As set forth in § 63.1-198.1 of the Code of Virginia) "The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties."

A "parent volunteer" is someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section or § 63.1-198.2 of the Code of Virginia.

Article 3.
Routing of Certificates.

§ 1.3. In order to obtain a certificate, each applicant for licensure, and employee, volunteer or applicant for employment/volunteer work, shall submit a Department of Social Services Criminal History Record Request form, obtainable from facility staff or licensing staff, to the Department of State Police with the appropriate fee.

§ 1.4. The State Police shall collect the fee, run a clearance check through the Central Criminal Records Exchange and forward the same form to the Department of Social Services, Division of Licensing Programs. It shall be marked either "no conviction data" or a conviction record shall be attached if one of the barrier crimes is recorded as a result of the State Police check.

§ 1.5. A certificate of Criminal Record Check and Affirmation of Sworn Disclosure Statement shall be sent directly from the Department of Social Services, Division of Licensing Programs, to the individual for whom the check was run.

In the event that a certificate cannot be issued, a notification shall be sent directly to the individual, along with a copy of the conviction information received from the State Police.

§ 1.6. This certificate, on Department of Social Services stationery with blue letterhead, shall be taken to, and maintained at, the facility where the person is employed or volunteers.

PART II.
VALIDITY OF CERTIFICATES.

§ 2.1. Facility staff shall accept only the original certificate on Department of Social Services stationery with blue letterhead. Photocopies shall not be acceptable.

§ 2.2. Obtaining certificates.

A. The certificate shall be obtained on or prior to the fifteenth day of work for individuals participating in the operation of a facility.

B. A certificate issued by the department shall not be accepted by facility staff if the certificate is dated more than 90 days prior to the date of employment or volunteer service at the facility.

§ 2.3. Each certificate shall be verified by the operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Record Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, the certificate shall be returned to the Division of Licensing Programs with a note of explanation.

§ 2.4. A certificate remains valid as long as the employee or volunteer remains in continuous service at the same facility.

§ 2.5. When an individual terminates employment or ceases volunteer work at one facility and begins work at a facility owned and operated by another entity, the certificate secured for the prior facility shall not be valid for the new facility. A new certificate shall be required.

EXCEPTIONS:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new certificate shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the certificate has been transferred, or forwarded to the new location.

2. A certificate for an individual who takes a leave of absence shall remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired,

a new certificate is required.

PART III.
DUPLICATE CERTIFICATES.

§ 3.1. There is a model form available from the Department of Social Services to request duplicate certificates.

All requests for duplicate certificates shall be sent by the individual or licensee directly to the Department of Social Services, Division of Licensing Programs, Richmond, Virginia.

§ 3.2. Requests for duplicate certificates.

A. A duplicate certificate shall be required when an individual is employed or volunteering concurrently at more than one facility such as a substitute or part-time employee or, when a certificate is lost or misplaced.

B. The request shall include: (i) the name, social security number, and signature of the individual for whom the clearance was completed; and (ii) the name and mailing address of the facility for which the duplicate certificate will be used.

C. If the duplicate certificate is to be used for an individual involved with more than one facility, the name of all facilities at which the individual is involved is required.

D. Duplicate certificates shall be sent directly to the facilities.

E. All duplicate certificates shall be verified by the licensee or facility operator in accordance with § 2.3 of this regulation.

F. Duplicate certificates may be requested with the original Criminal History Record Request Form by attaching either a model form provided by the Department of Social Services, or an attached letter with the information required by this section.

§ 3.3. When agents or officers of the board are involved as licensees in the operation of more than one facility, duplicate certificates shall not be required. It shall be made known to the Commissioner's representative that an original certificate is being maintained at a designated facility location.

PART IV.
MAINTENANCE AND RESPONSIBILITY OF CERTIFICATES BY FACILITIES.

§ 4.1. Prior to the issuance of an initial license, the certificate(s) of criminal record check for the applicant(s) for licensure shall be made available to the Commissioner's representative.

§ 4.2. Certificates conforming to the requirements for all employed staff or utilized volunteers shall be maintained in the files of the facility during the time the individual is employed or volunteering and for one year after termination of work. Certificates shall be made available by the facility to the Commissioner's representative.

EXCEPTION: See § 2.5 A.

§ 4.3. When an individual becomes an officer of the board which serves as the licensee of a facility, a certificate shall be obtained by the facility within 15 days after the board member assumes the position.

When a board officer changes position within a board, a new certificate is not required.

Officers of advisory boards are not required to obtain certificates.

SEE INSTRUCTIONS ON BACK

Commonwealth of Virginia — Department of Social Services

CRIMINAL HISTORY RECORD REQUEST

A certified check, organization check or money order made payable to "Virginia State Police" for $5.00 must accompany this request before a file search will be initiated.

MAIL REQUEST TO:
VIRGINIA STATE POLICE
DIVISION OF RECORDS & STATISTICS
P.O. BOX 27472
RICHMOND, VIRGINIA 23261-7472

RESPONSE BASED ON COMPARISON OF REQUESTOR FURNISHED INFORMATION AGAINST A MASTER NAME INDEX CONTAINED IN THE FILES OF THE VIRGINIA STATE POLICE CENTRAL CRIMINAL RECORDS

(STATE POLICE, MAIL REPLY TO:)
CAROLYNNE H. STEVENS, DIRECTOR
DIVISION OF LICENSING PROGRAMS
DEPARTMENT OF SOCIAL SERVICES
8007 DISCOVERY DRIVE
RICHMOND, VIRGINIA 23229-8699

Signature of Authorized Agent
Carolynne H. Stevens

PLEASE TYPE OR PRINT

LAST NAME	FIRST	MIDDLE/MAIDEN	SEX	RACE	DATE OF BIRTH Mo	Day	Year

PLACE OF BIRTH COUNTY/CITY/STATE/COUNTRY	PHONE #	SOCIAL SECURITY NUMBER

CURRENT MAILING ADDRESS (Street, Apt. and/or P.O. Box#)	CITY	STATE	ZIP CODE

FACILITY/AGENCY NAME/ADDRESS		
	CCC_____ FDCH_____ FDCS_____ IFH_____	CCI_____ CPA_____ (SEE BACK FOR CODES)

SWORN DISCLOSURE STATEMENT AND AFFIDAVIT FOR RELEASE OF INFORMATION

SWORN DISCLOSURE STATEMENT (REQUIRED TO BE COMPLETED BY INDIVIDUAL REQUESTING CLEARANCE)
INDIVIDUAL (PLEASE "X" ONE OF THE FOLLOWING) HAS____HAS NOT____EVER BEEN CONVICTED OF OR IS____IS NOT____ THE SUBJECT OF PENDING CHARGES FOR THE FOLLOWING OFFENSES: MURDER; ABDUCTION OF CHILDREN FOR IMMORAL PURPOSES; SEXUAL ASSAULT; FAILING TO SECURE MEDICAL ATTENTION FOR AN INJURED CHILD; PANDERING; CRIMES AGAINST NATURE INVOLVING CHILDREN; TAKING INDECENT LIBERTIES WITH CHILDREN; NEGLECT OF CHILDREN; OR OBSCENITY OFFENSES; WITHIN THE COMMONWEALTH OR ANY EQUIVALENT OFFENSE OUTSIDE THE COMMONWEALTH. ANY PERSON MAKING A MATERIALLY FALSE STATEMENT REGARDING ANY SUCH OFFENSE SHALL BE GUILTY OF A CLASS 1 MISDEMEANOR.

The Virginia State Police is hereby authorized to search for any criminal history record, pursuant to Section 63.1-198.1, Code of Virginia, pertaining to criminal record checks for children's facilities/agencies licensed by the Department of Social Services and report the results of such search to the Department of Social Services.

_____
(Signature of individual named in record)

State of_____ County/City of _____

Subscribed and sworn to before me this _____ day of _____, 19_____

_____
(NOTARY PUBLIC)

MY COMMISSION EXPIRES_____, 19_____

032-05-018/5 (5/1/89) ATTACH REQ. WITH

INSTRUCTIONS

Please read the following before completing this form

1. Complete the upper portion of this form which contains identifying information. Please include your maiden name, if applicable, and all names by which you have previously been known.

2. Check the following facility/agency codes as applicable:

   CCC-Child Care Center
   CCI-Child Caring Institution (residential)
   CPA-Child Placing Agency (for adoptive and foster parents, staff and volunteers)
   FDCH-Family Day Care Home
   FDCS-Family Day Care System
   IFH-Independent Foster Home

3. The individual for whom this check is being run must have his/her signature and this form notarized.

4. Complete the middle portion of this form under Sworn Disclosure Statement. Please "X" the appropriate two spaces and sign this portion of the form in the presence of a notary.

5. Include a $5.00 certified check, organization check or money order (no personal checks will be accepted) and mail the completed form to:

   Virginia State Police
   Division of Records and Statistics
   Post Office Box 27472
   Richmond, Virginia 23261-7472

6. This request will be processed by the Department of State Police and forwarded to Carolynne H. Stevens, Director, Division of Licensing Programs. A response will be sent directly to you. This original certificate, on blue letterhead from the Department of Social Services, must be taken to, and maintained at the licensed facility/agency/home in order to indicate that the criminal record check and sworn disclosure statement have been completed. This is required in Sections 63.1-198 and 63.1-198.1 of the Code of Virginia.

NOTE: When an individual is working or volunteering concurrently at more than one facility, please request additional certificates directly from the Department of Social Services, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699 or request one from your licensing specialist. There is a model form available for this purpose.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: **VR 230-40-001. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179, 63.1-196 and 63.1-217 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

Under the current definitions and exceptions in the Code of Virginia, the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for the licensure, certification, or approval of public and private residential facilities providing care or treatment to children.

The regulation establishes the minimum requirements necessary to protect children in care of residential facilities for children and assure that children receive at least a minimal level of care. The revision amends and clarifies the requirements governing management of children's behavior in §§ 1.1 and 5.94 of the Core Standards. The revision is designed to more clearly articulate the requirements governing behavior management. In addition, the revision amends and clarifies the definition of "Residential Facility for Children" in § 1.1; the definition stipulates which facilities are subject to regulation under the Core Standards.

Subsequent to publication in proposed form, and in response to public comment, language was added to § 5.94 concerning the rights of access to clients provided by statute to advocates employed by the Department for Rights of the Disabled and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

NOTICE: Please refer to the **Department of Social Services** in the Final Regulations section of this issue of The Virginia Register of Regulations for the publication of "Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children."

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-003. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179, 63.1-196 and 63.1-217 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

Under the current definitions and exceptions in the Code of Virginia, the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for the licensure, certification, or approval of public and private residential facilities providing care or treatment to children.

The regulation establishes the minimum requirements necessary to protect children in care of residential facilities for children and assure that children receive at least a minimal level of care. The revision amends and clarifies the requirements governing management of children's behavior in §§ 1.1 and 5.94 of the Core Standards. The revision is designed to more clearly articulate the requirements governing behavior management. In addition, the revision amends and clarifies the definition of "Residential Facility for Children" in § 1.1; the definition stipulates which facilities are subject to regulation under the Core Standards.

Subsequent to publication in proposed form, and in response to public comment, language was added to § 5.94 concerning the rights of access to clients provided by statute to advocates employed by the Department for Rights of the Disabled and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

NOTICE: Please refer to the **Department of Social Services** in the Final Regulations section of this issue of The Virginia Register of Regulations for the publication of "Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children."

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: **VR 450-01-8902. Opening of Deep Water Shoal, James River (Condemnation Areas 23 and 69).**

Statutory Authority: § 28.1-85 of the Code of Virginia.

Effective Date: May 1, 1989 to June 1, 1989

Preamble:

The following order of the Marine Resources Commission opens that area known as Deep Water Shoal, James River to the relaying of shellfish.

§ 1. Authority, effective date.

A. This order is promulgated pursuant to the authority contained in § 28.1-85 of the Code of Virginia.

B. Other laws and regulations.

1. Marine Resources Commission Order No. 450-01-8808, effective June 1, 1988, established the Deep Water Shoal area as a Repletion Program seed area.

2. Section 28.1-179 of the Code of Virginia sets forth the rules and procedures for relaying shellfish from condemned shellfish growing areas established by the State Health Department.

C. The effective date of this order is May 1, 1989.

§ 2. Purpose.

The purpose of this order is to open the area known as Deep Water Shoal in the James River to the relaying of shellfish by industry.

§ 3. Designated areas.

That area known as Deep Water Shoal in the James River established as a Repletion Program seed area. This area is in Condemnation Area Nos. 23 and 69. (For further description see VR 450-01-8808.)

§ 4. Expiration date.

This order shall terminate on June 1, 1989.

/s/ William A. Pruitt
Commissioner
Date: April 13, 1989

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

* * *

Due to its length, the regulation entitled "Eligibility Conditions and Requirements" filed by the Department of Medical Assistance Services is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. Also, the page containing the amendments is set out below. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and the Department of Medical Assistance Services.

Title of Regulation: **VR 460-02-2.6100. Eligibility Conditions and Requirements: State Plan for Medical Assistance Relating to Maintenance of Income for the Community Spouse of an Institutionalized Recipient.**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

This final regulation provides for the replacement of one current maximum income limit by another. Presently, the community spouse of an institutionalized recipient is allowed to retain for maintenance needs a monthly amount up to the medically needy resource levels. This final regulatory action provides for that allowable upper limit amount to be changed to the SSI allowable levels. This change has resulted from Chapter 215 of the 1988 Acts of Assembly (House Bill 605 - 1988) which becomes effective July 1, 1989.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

ATTACHMENT 2.6-A
Page 4
OMB NO.: 0938-0193

Citation	Condition or Requirement
435.725 435.733 435.832	B. Post-Eligibility Treatment of Institutionalized Individuals The following amounts are deducted from gross income when computing the application of an individual's or couple's income to the cost of institutional care: 1. Personal Needs Allowance. a. Aged, blind, disabled-- Individuals $ 30.00 Couples $ 60.00 For the following individuals with greater need-- patients in institutions who participate in work programs as part of treatment. The first $75.00 of earnings plus 1/2 the remainder, up to a maximum of $190.00 monthly is allowed to be retained for personal needs. b. AFDC related-- Children $ 30.00 Adults $ 30.00 c. Individuals uner age 21 covered in this plan as specified in Item B.7 of ATTACHMENT 2.2-A. $ 30.00
435.725 435.733 435.832	2. For maintenance of the non-institutionalized spouse only. The amount must be based on a reasonable assessment of need but must not exceed the highest of -- SSI level $ 368.00 SSP level $ Monthly medically needy level $ Other as follows $

[illegible]

CERTIFIED:

05/01/89
Date

Bruce U. Kozlowski, Director
Department of Medical Assistance Services

* * * * * * *

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors, and § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to conform to changes in Virginia Statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested persn at any time with respect to reconsideration or revision.

Title of Regulation: **State Plan for Medical Assistance Relating to Virginia-Specific DRI Inflation Factor for Hospitals and Nursing Homes.**
VR 460-02-4.191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.
VR 460-03-4.194. Nursing Home Payment System.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

This final regulatory action combines a change mandated by the 1989 General Assembly with some technical corrections. The attorney general's office has determined that both types of changes are exempt from the public notice and comment requirements of Article 2 of the Administrative Process Act.

The mandated change provides for the national Data Resources Incorporated inflation factor to be modified to one more specific to Virginia. The technical corrections concern the addition of end dates for policies being superseded and the bed size divisions applicable to hospital reimbursement.

The department presently has two effective emergency regulations which modify this final regulation Inpatient Hospital Reimbursement Methodology as published. The emergency regulation concerning Disproportionate Share Adjustment is effective from September 29, 1988, through September 28, 1989. Nonenrolled Provider Reimbursement is effective from September 1, 1988, through August 31, 1989.

VR 460-02-4.191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs (a) and (b) above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals ~~should be~~ *were* grouped by classes according to number of beds and urban versus rural. (Three groupings for rural– ~~less than~~ *0 to* 100 beds, 101 to 170 beds, and over ~~171~~ *170* beds; four groupings for urban– ~~less than~~ *0 to* 100, ~~100~~ *101* to 400, 401 to 600, and over ~~601~~ *600* beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, ~~shall be~~ *were* subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a

reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, *and until June 30, 1988,* providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, *and until June 30, 1989,* for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals will be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals will be adjusted to reflect this change.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1982, the group ceilings should not be recalculated on allowable costs, but should be updated by the escalator.

(4) Prospective rates for each hospital should be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment should be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to HIM-15 (Sec. 400), should be considered as pass throughs and not part of the calculation.

(5) An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day $	Difference $	Difference % of Ceiling	Sliding Scale Incentive $	Sliding Scale Incentive % of Difference
$230	$230	0	0	0	0
$230	207	23.00	10%	2.30	10%
$230	172	57.50	25%	14.38	25%
$230	143	76.00	33%	19.00	25%

(6) There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling should be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This should be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% should receive an adjustment to its ceiling. The adjustment should be set at a percent added to the

ceiling for each percent of utilization up to 30%.

~~The table below presents three examples under the new plan:~~

~~Group Ceiling~~	~~Hospital's Allowable Cost Per Day $~~	~~Difference $~~	~~% of Ceiling~~	~~Sliding Scale Incentive $~~	~~% of Difference~~
~~$230~~	~~$230~~	~~-0-~~	~~-0-~~	~~-0-~~	~~-0-~~
~~$230~~	~~207~~	~~23.00~~	~~10%~~	~~2.30~~	~~10%~~
~~$230~~	~~172~~	~~57.50~~	~~25%~~	~~14.38~~	~~25%~~
~~$230~~	~~143~~	~~76.00~~	~~33%~~	~~19.00~~	~~25%~~

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Home office cost report, if applicable; and

6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

VIII. Refund of overpayments.

A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

Hospital Reimbursement Appeals Process

§ 1. Right to appeal and initial agency decision.

A. Right to appeal.

Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Service within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under § 5 E. The written request for appeal must contain the information specified in § 1 B. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.

B. Required information.

Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.

C. Nonappealable issues.

The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bedsize and the use of bedsize and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the ~~Bureau of Labor Statistics Consumer Price Index (CPI) (excluding housing and interest components)~~ *inflation factor identified in the State Plan* as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "twenty-one day rule").

D. The rate which may be appealed shall include costs which are for a single cost reporting period only.

E. The hospital shall bear the burden of proof throughout the administrative process.

§ 2. Administrative appeal of adverse initial agency determination.

A. General.

The administrative appeal of an adverse initial agency determination shall be made in accordance with the Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia as set forth below.

B. The informal proceeding.

1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.

2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:

a. The adverse agency action appealed from;

b. A detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia within 45 days of the request.

4. The Director of the Division of Provider Reimbursement of the Department of Medical Assistance Services, or his designee, shall preside over the informal conference. As hearing officer, the director (or his designee) may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Division of Provider Reimbursement, having considered the criteria for relief set forth in §§ 4 and 5 below, shall take any of the following actions:

a. Notify the provider that its request for relief is denied setting forth the reasons for such denial; or

b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or

c. Notify the provider that its request for relief will be granted in part and denied in part setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 30 days of the conclusion of the informal conference.

§ 3. The formal administrative hearing: procedures.

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from; and

2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

§ 4. The formal administrative hearing: necessary demonstration of proof.

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.

2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals, may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to submit to the agency the data it has developed for the Virginia Health Services Cost Review ~~Commission~~ *Council* . The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy,
- Average hourly wage,
- FTE's per adjusted occupied bed,
- Nursing salaries per adjusted patient day,
- Average length of stay,
- Average cost per surgical case,
- Cost (salary/nonsalary) per ancillary procedure,
- Average cost (food/nonfood) per meal served,
- Cost (salary/nonsalary) per pharmacy prescription,
- Housekeeping cost per square foot,
- Maintenance cost per square foot,
- Medical records cost per admission,
- Current ratio (current assets to current liabilities),
- Age of receivables,
- Bad debt percentage,
- Inventory turnover,
- Measures of case mix,
- Average cost per pound of laundry.

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospitals's operation.

- Flexible budgeting system,
- Case mix management systems,
- Cost accounting systems,
- Materials management system,
- Participation in group purchasing arrangements,
- Productivity management systems,
- Cash management programs and procedures,
- Strategic planning and marketing,
- Medical records systems,
- Utilization/peer review systems.

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from

demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover operating costs related to inpatient care is insufficient to provide care and service that conforms to applicable state and federal laws, regulations and quality and safety standards.[1]

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.[2] In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.[3]

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability; and

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care within a 30 minute travel time at a total per diem rate which is less to the Department of Medical Assistance Services than the costs which would be incurred by the Department of Medical Assistance Services per patient day were the appellant hospital granted relief.[4]

E. In determining whether to award additional reimbursement to a hospital for reimbursement cost which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid applicable Medicare rules of reimbursement.

§ 5. Available relief.

A. Any relief granted under §§ 1 through 4 above shall be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with § 4 (excluding plant and education costs and return on equity capital); and

2. The prospective operating cost per diem, identified in the Medicaid Cost Report and calculated by the Department of Medical Assistance Services.[5]

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system, or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients, or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

D. Any relief awarded under §§ 1 through 4 above shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began on or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in subsection A of § 1 is filed within 90 days of the effective date of these regulations.

§ 6. Catastrophic occurrence.

A. Nothing in §§ 1 through 5 shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

1. One time occurrence;

2. Less that 12 months duration;
3. Could not have been reasonably predicted;
4. Not of an insurable nature;
5. Not covered by federal or state disaster relief;
6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

Footnotes:

[1]See 42 U.S.C. § 1396 (a) (13) (A). This provision reflects the Commonwealth's concern that it reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services. . . that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered – not "adequate health care." Alexander v. Choate – U.S. – decided January 9, 1985, 53 U.S. L.W., 4072, 4075.

[2]In Mary Washington Hospital v. Fisher, the court ruled that the Medicaid rate "must be adequate to ensure reasonable access." Mary Washington Hospital v. Fisher, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid Program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state.

46 Fed. Reg. 47970.

[3]The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated – and therefore has good cause to consider withdrawal from the Program – and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors – indeed, less than average cost per day for all patients – it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or "incremental harm" concept is a device to assess the potential harm to a hospital continuing to treat Medicaid recipients, and not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

[4]With regard to the 30 minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

[5]The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, it may share in the cost associated with those circumstances. This is consistent with existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than its share of fixed costs. Any relief to an appellant hospital will be computed on an occupancy adjusted basis. Relief will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the 21 day limit currently in effect.

VR 460-03-4.194. Nursing Home Payment System.

NOTICE: Due to its length, the regulation entitled Nursing Home Payment System filed by the Department of Medical Assistance Services is not being published. However, the specific amendments to this regulation are set out below. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and the Department of Medical Assistance Services.

§ 2.7. (continued).

B. The calculation of the initial regional medians as of July 1, 1982, was based on available allowable cost data for all nursing homes in the calendar year 1981. Nursing home operating costs were advanced by a reimbursement escalator from the nursing home's year end to July 1, 1982. The median was determined using this data.

These ceilings were adjusted once each quarter by the escalator. Thus, the quarterly ceilings have been used for nursing homes which have a fiscal year beginning within the quarter for the period from July 1, 1982, through June 30, 1986.

C. Reimbursement escalator.

1. The regional medians were not recalculated on actual costs, but were updated by the escalator.

2. Effective after July 1, 1986, *and until June 30, 1988,* providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This new method used an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the providers new fiscal year begins.

3. The prospective operating cost rate is based on the providers allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

4. The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling.

This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, *and until June 30, 1989,* for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost - Skilled Nursing Facility Market Basket of Routine Service Costs determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such long term care facilities will be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such long-term care facilities will be adjusted to reflect this change.

5. The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

6. Allowable plant costs will continue to be reimbursed in accordance with the existing formula. Such costs are defined in ~~A.1~~ *§ 2.1 A* . Plant costs shall not include the component of cost related to making or producing a supply or service.

7. Prospective rates for each nursing home will be based on the home's allowable operating costs per diem plus the escalator or the appropriate ceilings, or charges, whichever is lower. The disallowance of unallowable costs will be reflected in the subsequent year's prospective rate determination.

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REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with (i) § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors, and (ii) § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested persons at any time with respect to reconsideration or revision.

Title of Regulation: **State Plan for Medical Assistance Relating to 1989 Mandatory and Clarifying Pharmacy Changes.**
VR 460-02-4.181. Charges Imposed on Categorically Needy for Certain Services.
VR 460-02-4.183. Charges Imposed on Medically Needy for Certain Services.
VR 460-02-4.192. Methods and Standards for Establishing Payment Rates - Other Types of Care.
VR 460-03-3.1100. Amount, Duration and Scope of Services.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

These final rules implement cost saving mandates from the 1989 General Assembly which will reduce pharmacy expenditures. They also provide for the coverage of test strips for diabetic children.

The clarifying change concerns the addition of copayment language to the pharmacy reimbursement section of Attachment 4.19 B. The department's copayment policy has historically been provided in Attachments 4.18 A and C. Its addition to the pharmacy reimbursement section is for cross-referencing purposes.

VR 460-02-4.181. Charges Imposed on Categorically Needy for Certain Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: VIRGINIA

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905(a)(1) through (5) and (7) of the Act.

Service	Type Charge Deduct	Coins	Copay	Amount and Basis for Determination
Clinic Visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Eye examination	-0-	-0-	$1.00	State's average payment of $30 is used as basis.
Pharmacy services	-0-	-0-	$ .50	Program payment is $10.00 or less.
	-0-	-0-	$1.00	Program payment is $10.01 or more.
			$1.00	State's average of $14.47 is used as payment basis.

B. The method used to collect cost sharing charges for categorically needy individuals:

☒ Providers are responsible for collecting the cost sharing charges from individuals.

☐ The agency reimburses providers the full Medicaid rate for a services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he/she is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described below:

The application and exclusion of cost sharing is administered through the program's MMIS. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; prohibition of service denial if recipient is unable to meet cost-sharing charges.

E. Cumulative maximums on charges:

☒ State policy does not provide for cumulative maximums.

☐ Cumulative maximums have been established as described below:

VR 460-02-4.183. Charges Imposed on Medically Needy for Certain Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: VIRGINIA

A. The following charges are imposed on the medically needy for services:

Service	Type Charge Deduct	Coins	Copay	Amount and Basis for Determination
Inpatient hospital	$30.00	-0-	-0-	State's average payment of $1,903 is used as basis.
Hospital out-patient clinic	-0-	-0-	$2.00	State's average payment of $52 is used as basis.
Clinic visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Physician office visit	-0-	-0-	$1.00	State's average payment of $20 is used as basis.
Eye examination	-0-	-0-	$1.00	State's payment of $30.00 is used as basis.
Prescription	-0-	-0-	$ .50	Program payment is $10.00 or less
	-0-	-0-	$1.00	Program payment is $10.01 or more.
			$1.00	State's average payment of $14.47 is used as basis.

B. The method used to collect cost sharing charges for medically needy individuals:

☒ Providers are responsible for collecting the cost sharing charges from individuals.

☐ The agency reimburses providers the full Medicaid rate-

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he/she is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described below:

The application and exclusion of cost sharing is administered through the Program's MMIS. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; prohibition of service denial if recipient is unable to meet cost sharing changes.

E. Cumulative maximums on charges:

☒ State policy does not provide for cumulative maximums.

☐ Cumulative maximums have been established as described below:

VR 460-02-4.192. Methods and Standards for Establishing Payment Rates - Other Types of Care.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

b. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

c. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

d. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Item 398 D of the 1987 Appropriation Act (as amended),

effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

The services that are cost reimbursed are:

(1) Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

(2) Home health care services

(3) Outpatient hospital services excluding laboratory

(4) Rural health clinic services

(5) Rehabilitation agencies

(6) Comprehensive outpatient rehabilitation facilities

(7) Rehabilitation hospital outpatient services.

e. Payment for the following services shall be the lowest of: State agency fee schedule, actual charge (charge to the general public), or Medicare (Title XVIII) allowances:

(1) Physicians' services

(2) Dentists' services

(3) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(4) Podiatry

(5) Nurse-midwife services

(6) Durable medical equipment

(7) Local health services

(8) Laboratory services (Other than inpatient hospital)

(9) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(10) X-Ray services

(11) Optometry services

(12) Medical supplies and equipment.

f. Payment for pharmacy services shall be the lowest of items (1) through (5) (except that items (1) and (2) will not apply when presciptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is higher than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items (6) and (7) below:

(1) The upper limit established by the Health Care Financing Adminstration (HCFA) for multiple source drugs which are included both on HCFA's list of mutiple source drugs and on the Virginia Voluntary Formulary (VVF), unless specified otherwise by the agency;

(2) The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF;

(3) The estimated acquisition cost established by the agency for legend drugs except oral contraceptives; plus the dispensing fee established by the state agency, or

(4) A mark-up allowance determined by the agency for covered nonlegend drugs and oral contraceptives; or

(5) The provider's usual and customary charge to the public, as identified by the claim charge.

(6) Payment for pharmacy services ~~to patients of skilled or intermediate care facilities~~ will be as described above; however, payments for legend drugs *(except oral contraceptives)* will include the allowed cost of the ~~drugs~~ *drug* plus only one dispensing fee per month for each specific drug. *Payments will be reduced by the amount of the established copayment per prescription by noninstitutionalized clients with exceptions as provided in federal law and regulation.*

(7) The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in skilled or intermediate care facilities. Reimbursements are based on the allowed payments described above plus the unit dose add on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing

care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan.

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age 1 shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

n. *(Reserved.)*

o. Refund of overpayments.

(1) Providers reimbursed on the basis of a fee plus cost of materials.

(a) When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

(c) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(d) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

(2) Providers reimbursed on the basis of reasonable costs.

(a) When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

(c) If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

(d) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(e) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

VR 460-03-3.1100. Amount, Duration, and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home ealth services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services

are in Attachment 3.1 E.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

No limitations on this service.

§ 3. Other laboratory and x-ray services.

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

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

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

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

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

3. Eyeglasses are provided only as a result of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and require prior authorization by the Program.

4c. Family planning services and supplies for individuals of child-bearing age.

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

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given

seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive eligibility period.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services (except for orthoptics) by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of

Medicine are covered.

§ 7. Home Health services.

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

B. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

C. Home health aide services provided by a home health agency.

Home health aides must function under the supervision of a professional nurse.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

Service covered only as part of a physician's plan of care.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are not covered: full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations; and inhalation analgesia.

D. The state agency may place appropriate limits on a service based on dental necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); and extractions, permanent crowns, endodontics, patient education (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or

outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, ~~and~~ needles ~~and all~~ *, diabetic test strips for clients under 21 years of age, and* family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of ~~anorexant~~ *anorexiant* drugs prescribed for weight loss *and transdermal drug delivery systems* , are covered. *Coverage of anorexiants for other than weight loss requires preauthorization.*

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

12b. Dentures.

Not provided.

12c. Prosthetic devices.

Not provided.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

1. Medicaid covers intensive inpatient rehabilitation services as defined in § 2.1 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient rehabilitation services as defined in § 2.1 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs), or when the outpatient program is administered by a rehabilitation hospital or an exempted rehabilitation unit of an acute care hospital certified and participating in Medicaid.

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

Not provided.

§ 19. Extended services to pregnant women.

19a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

19b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 20. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

20a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

20b. Services of Christian Science nurses.

Not provided.

20c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

20d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

20e. Emergency hospital services.

Provided, no limitations.

20f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

Title of Regulation: **VR 470-02-01. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179, 63.1-196 and 63.1-217 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

Under the current definitions and exceptions in the Code of Virginia, the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for the licensure, certification, or approval of public and private residential facilities providing care or treatment to children.

The regulation establishes the minimum requirements necessary to protect children in care of residential facilities for children and assure that children receive at least a minimal level of care. The revision amends and clarifies the requirements governing management of children's behavior in §§ 1.1 and 5.94 of the Core

Standards. The revision is designed to more clearly articulate the requirements governing behavior management. In addition, the revision amends and clarifies the definition of "Residential Facility for Children" in § 1.1; the definition stipulates which facilities are subject to regulation under the Core Standards.

Subsequent to publication in proposed form, and in response to public comment, language was added to § 5.94 concerning the rights of access to clients provided by statute to advocates employed by the Department for Rights of the Disabled and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

NOTICE: Please refer to the **Department of Social Services** in the Final Regulations section of this issue of The Virginia Register of Regulations for the publication of "Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children."

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Title of Regulation: **VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children.**

Statutory Authority: §§ 37.1-10, 37.1-179.1 and 37.1-182 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

Under the current definitions in the Code of Virginia, the Department of Mental Health, Mental Retardation and Substance Abuse Services is responsible for the licensure of facilities and institutions providing care or treatment to mentally ill, mentally retarded and substance abusing children.

These regulations in conjunction with the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities For Children articulate the minimum requirements for licensure of residential facilities providing care or treatment to these groups. These are amendments to the present regulations and are designed to more clearly articulate the requirements governing behavior management and the use of intrusive aversive therapy in residential facilities for children licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children.

PART I.
INTRODUCTION.

These Mandatory Program Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children were developed to work in conjunction with the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children. These mandatory standards delineate the areas necessary for programs to become certified/ *licensed* as providing treatment or training for the mentally ill, mentally retarded, or substance abusing client in 24-hour residential care setting.

Article 1.
Definitions.

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

"Advocate" means a person or persons appointed by the commissioner after consultation with the State Human Rights Director and the Local Human Rights Committee who exercise the duties set forth in Part III A of the Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substances (e.g. hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

"Behavior management" means planned, individualized, and systematic use of various techniques selected according to group and individual differences of the children and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior, and to reduce or to eliminate undesirable behavior. (The term is consistently generic and is not confined to those techniques which derive specifically from behavior therapy, operant conditioning, or similar techniques.

"Case coordinator" means the person responsible for ensuring continuity of services. This may be a staff member designated to manage the service plan of a particular child and coordinate the delivery of services to meet the needs of the client. Case coordination service may be provided from outside the program if appropriate. The case coordinator shall serve as the liaison between the program and the client's family or legally authorized representative.

"Chemotherapy" means the use of psychotropic and seizure medication for controlling aberrant mental/emotional functioning. The goal of chemotherapy shall be to stabilize and maintain neurophysiological functioning with the intent of reduction as appropriate.

"Client" means a ~~mentally retarded, emotionally ill or substance abusing youth from 0-17 years of age receiving services from a residential treatment facility for children and/or adolescents or group residence~~ *person receiving treatment or other services from a program, facility, institution or other entity licensed/certified under these regulations whether that person is referred to as a patient, resident, student, consumer, recipient, or another term .*

"Client data base" means the written information necessary for the initial and continued diagnosis or assessment of strengths and problems/needs in order to adequately justify and plan for services.

"Client goal" means expected results or conditions that usually involve a long period of time and which are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Client objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"Core Standards" mean **Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.**

"Counseling/psychotherapy" means all formal treatment interventions such as individual, family and group modalities which provide for support and problem solving. Such interventions take place between program staff and client(s) and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being and ameliorating psychological disorders.

"Crisis intervention" means activities aimed at the rapid intervention and management of psychosocial and social distress caused by acute mental illness or acute substance abuse related problems.

"Direct services" mean services that are provided directly by the program and are an integrated part of the overall service delivery system.

"Discipline" means systematic teaching and training that is designed to correct, mold, or perfect behavior according to a rule or system of rules governing conduct. The object of discipline is to encourage self-direction and self-control through teaching the client to accept information, beliefs and attitudes which underlie the required conduct or behavior. The methods of discipline include, besides such instruction, positive reinforcement for exhibiting desirable behavior as well as reasonable and age-appropriate consequences for exhibiting undesirable behavior, provided that these consequences are applied in a consistent and fair manner that gives the client an opportunity to explain his view of the misbehavior and to learn from the experience.

"Generic services" mean services that are not provided directly by the program but which are available in the community for any resident of that community. These services are also referred to as indirect services.

"Growth services" mean activities aimed at developing and maintaining personal, interpersonal and instrumental skills.

"Individual treatment plan" means a plan for the treatment ~~and/~~ or training *, or both,* for each client that specifies long term goals, objectives to achieve the goals, the strategies to reach these objectives, the individual responsible for carrying out these strategies and the time frames for the obtainment of these objectives. An individualized treatment plan shall be considered the same as individualized service plans as defined in the Core Standards.

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. The term shall not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia, or psychotropic medications which are used for purposes other than intrusive aversive therapy.

"Local human rights committee" means a committee of at least five members broadly representative of professional and consumer groups, appointed by the State Human Rights Committee for each group of community services board or licensed organization after consultation with the commissioner, and whose responsibility shall be to perform the functions specified in applicable human rights regulations. Except where otherwise provided, the term "Local human rights committee" shall mean this body or any subcommittee thereof.

"On-site training" means activities provided in the natural environment aimed at increasing interpersonal ~~and/~~ or instrumental skills.

"Preplacement services" mean services aimed at the establishment of a service relationship between the youth, parent(s) or legal guardian, the referring agency and the facility where services will be provided.

"Regional advocate" means a person or persons who perform the functions set forth in Part IV of the Rules and Regulations Assuring the Rights of Clients in Community Programs and who are appointed by the commissioner after consultation with the State Human Rights Director.

"Seclusion" means the placing of a client in a room

with the door secured in any manner that will not permit the client to open it.

"Social skill training" means activities aimed at developing and maintaining interpersonal skills.

"Stabilization services" mean activities aimed at the reduction of acute emotional disabilities and their physical and social manifestations.

"State human rights committee" means a committee of nine members appointed by the board, pursuant to the Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services, whose responsibility it shall be to perform the functions specified in those regulations and the Rules and Regulations to Assure the Rights of Clients in Community Programs. The term "State human rights committee" includes any subcommittees thereof.

"Task and skill training" means activities aimed at developing and maintaining knowledge, skills and actions related to community living.

"Time-out procedure" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a client from contact with people or other reinforcing stimuli through confining the child alone to a special time-out room that is unfurnished or sparsely furnished and which contains few reinforcing environmental stimuli. The time-out room shall not be locked nor the door secured in any manner that will prohibit the client from opening it.

Article 2.
Allowable Variance.

§ 1.2. When, in the opinion of the department, the enforcement of one or more of the following regulations creates an undue hardship, the department shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of the following regulations, provided client care is not adversely affected.

PART II.
SERVICE POLICIES AND PROCEDURES.

Article 1.
Client Rights.

The following sections are additional requirements to the Core Standards, Part II, Article 9 and Part V, Articles 26 and 27.

§ 2.1. Each program operated, funded or licensed by the Department of Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* shall guarantee client rights as outlined in *the* Code of Virginia, § 37.1-84.1 and the applicable regulations promulgated on the rights of clients in community programs.

§ 2.2. Each program shall have written policies and procedures regarding the photographing and audio or audio-video recordings of clients which shall ensure and provide for:

1. The written consent of the client or the client's legally authorized representative shall be obtained before the client is photographed or recorded for research or program publicity purposes.

2. No photographing or recording by program personnel shall take place without the client ~~and/~~ or the client's family or legally authorized representative being informed.

3. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the client.

§ 2.3. Each program shall have written policies and procedures for managing all inappropriate or dangerous client behavior. These policies shall include:

1. Seclusion or restraints shall only be used in accordance with § 37.1-84.1 of the Code of Virginia and the applicable regulations on the rights of clients in community programs.

2. Time-out, which shall only be used in accordance with § 37.1-84.1 of the Code of Virginia and the applicable regulations promulgated on the rights of clients in community programs.

a. Time-out shall not exceed 15 minutes at any one time.

3. Program staff shall neither abuse a client verbally nor physically.

§ 2.4. Each client shall be placed in the least restrictive level of programming appropriate to their functioning and available services.

§ 2.5. Each program shall implement written policies and procedures concerning behavior management that are directed toward maximizing the growth and development of the individual. These policies and procedures shall:

1. Emphasize positive approaches;

2. Define and list techniques that are used and available for use in the order of their relative degree of intrusiveness or restrictiveness;

3. Specify the staff members who may authorize the use of each technique;

4. Specify the processes for implementing such policies and procedures;

5. Specify the mechanism for monitoring and

controlling the use of behavior management techniques;

6. Specify the methods for documenting the use of behavior management techniques; and

7. Provide that aversive stimuli may be applied only as part of an intrusive aversive therapy plan approved pursuant to the requirements of these regulations and may be applied only in a manner that is controllable with respect to duration and intensity.

§ 2.6. In the list required by § 2.5 2 of techniques that are used and available for use, intrusive aversive therapy if allowed shall be designated as the most intrusive technique.

§ 2.7. A behavior management plan utilizing intrusive aversive therapy shall not be implemented with any resident until the local human rights committee has determined:

1. That the resident or his authorized representative has made an informed decision to undertake the proposed intrusive aversive therapy, and in the case of a minor who is capable of making an informed decision, that the concurrent consent of the parent has been obtained;

2. That the proposed intrusive aversive therapy plan has been approved by a clinical psychologist who is licensed or license eligible by the Board of Medicine or the Board of Psychology;

3. That the facility has satisfactorily demonstrated that the proposed intrusive aversive therapy plan does not involve a greater risk of physical or psychological injury or discomfort to the client than the behaviors that the plan is designed to modify;

4. That there is documentation that a representative sample of less intrusive behavior management procedures [~~*have*~~ *has*] *been tried without success;*

5. That more appropriate and competing behaviors are being positively reinforced;

6. That a licensed physician has certified that in his opinion, the intrusive aversive therapy procedure will not endanger the health of the client;

7. That the aversive therapy technique is measurable and that the proposed aversive stimuli can be uniformly applied with respect to intensity and duration;

8. That the proposed aversive stimuli do not involve striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client;

9. That the intrusive aversive therapy plan specifies the behavioral objective, the frequency and intensity of application of the aversive stimuli, the time limit for both application of the aversive stimuli and the overall length of the plan, and the collection of behavioral data to determine the plan's effectiveness; and

10. That the intrusive aversive therapy plan is developed, implemented and monitored by staff professionally trained in behavior management programming, and witnessed by an approved professionally trained staff person.

§ 2.8. The local human rights committee having made the determinations required by § 2.7 of these regulations may then approve the proposed intrusive aversive therapy plan for a period not to exceed 90 days. The plan shall be monitored through unannounced visits by a designated human rights advocate. In order for the plan to be continued, the local human rights committee shall again make the determinations required in § 2.7 and may then approve the proposed intrusive aversive therapy plan for an additional period not to exceed 90 days.

§ 2.9. The advocate or regional advocate shall be informed of all applications of an aversive stimulus in an approved intrusive aversive therapy program.

§ 2.10. The client subjected to intrusive aversive therapy procedures and the advocate or regional advocate shall be given an opportunity to obtain an independent clinical and local human rights committee review of the necessity and propriety of their use at any time.

Article 2.
Medication.

The following sections are additional requirements to the Core Standards, Part V, Article 19.

§ ~~2.5.~~ *§ 2.11.* There shall be written policies and procedures regarding the delivery and administration of prescription and nonprescription medications used by clients.

§ ~~2.6.~~ *§ 2.12.* In accordance with § 54-524.65 of the Code of Virginia, prescription medications can only be administered by physician, dentist, nurse, pharmacist, medication technician or a person authorized by a physician in writing under the supervision of the physician or pharmacist.

§ ~~2.7.~~ *§ 2.13.* In accordance with § 54-524.65 of the Code of Virginia, prescription medication may be delivered by any designated employee for self-administration by the client, under the supervision of the program director, and only by the order of a physician. The designated employee shall have satisfactorily completed a medication assistance training program for this purpose approved by the Board of Nursing.

§ ~~2.8.~~ *§ 2.14.* Only those clients judged by the program staff to have an adequate level of functioning shall be allowed to self-administer nonprescription medication.

§ ~~2.9.~~ *§ 2.15.* Controlled substances shall be stored in a safe, appropriate and secure place.

§ ~~2.10.~~ *§ 2.16.* There shall be written policies and procedures for documenting the administration of medication, medication errors and drug reactions.

A. Drugs prescribed following admission which shall include:

1. The date prescribed;

2. Drug product name;

3. Dosage;

4. Strength;

5. Route;

6. Schedule; *and*

7. Dates medication discontinued or changed.

§ ~~2.11.~~ *2.17.* There shall be written policies and procedures for informing clients, families, ~~and/~~ or legally authorized representatives of the potential side effects of prescribed medications.

§ ~~2.12.~~ *§ 2.18.* Each program shall have written policies and procedures regarding the quarterly review of chemotherapy by a physician (in conjunction with program staff if needed) to include:

1. Documentation of the need for continued use of chemotherapy with evidence that alternative treatment strategies other than chemotherapy are under consideration;

2. Documentation of all counter-indications and unusual effects of medication as they relate to a particular client; *and*

3. Documentation of multiple drug usage and effects for specific clients (when appropriate).

PART III.
CLIENT INFORMATION, CLIENT RECORDS AND CONFIDENTIALITY.

Article 1.
Client Records.

The following sections are additional requirements to the Core Standards, Part V, Article 4.

§ 3.1. The facility shall have written policies and procedures that provide that a record be maintained for each client which shall include:

1. Completed admissions and screening procedures and forms and an admissions client data base which shall include:

a. Psychological functioning;

b. Family history/relationships;

c. Social/development history;

d. Current behavioral functioning/social competence;

e. Current emotional status;

f. Educational/vocational skills;

g. Medical history, including past or present significant medical problems and use of psychotropic or anti-convulsant medication; *and*

h. History of previous treatment for mental health, mental retardation, substance abuse and behavior problems.

2. Necessary release forms.

3. Drug use profile which shall include:

a. History of prescription and nonprescription drugs being taken at the time of admission and for the previous six months;

b. Drug allergies, idiosyncratic and other adverse drug reactions; *and*

c. Ineffective chemotherapy.

Article 2.
Client Information and Confidentiality.

The following sections are additional requirments to the Core Standards, Part II, Articles 10 through 13.

§ 3.2. Each program shall have a complete set of written policies and procedures with respect to protecting, disseminating, and acquiring client information which shall be incompliance with § 37.1-84.1 of the Code of Virginia, and the applicable regulations promulgated on the rights of clients in community programs which shall include:

1. Procedures for securing information about clients from other agencies and for the subsequent confidentiality of that information;

2. A sample of each type of release of information form used by the program. These forms shall specify to whom the information will be released and the conditions or time at which the release form shall

become ineffective;

3. A provision that originals or all approved release of information forms received shall be stored in administrative files and copies of forms will be stored in individual case folders;

4. A provision regarding the length of time that records of terminated clients shall be retained and how those records will be destroyed; *and*

5. A provision that clients shall be informed about privileged communications, including the types of information to be released and the condition under which that information must be released and to whom it will be released.

Article 3.
Treatment Planning.

The following sections are additional requirements to the Core Standards, Part V, Articles 12 through 14.

§ 3.3. There shall be a complete, written description of policies and procedures the program staff uses in treatment planning. These policies shall include:

1. A description of the procedures staff use in treatment planning, which includes provisions for written client assessments, identification of goals, planning of intervention programs by multi-disciplinary teams (if appropriate), and involving the client and family ~~and/~~ or legally authorized representative in developing service intervention plans.

§ 3.4. The individualized treatment plans shall include:

1. Individual client objectives which are congruent with and justified by the client data base;

2. Individual client objectives which include the degree of competency or standards of achievement which the client must attain;

3. Individual client objectives that are time related;

4. Prescribed strategies which are appropriate for achieving client objectives;

5. Resources to accomplish client objectives which are readily available to staff;

6. Appropriate service providers are specified for each part of the program plan;

7. Documentation that the client receives program services congruent with those prescribed under the individual treatment plan; *and*

8. Modification of client objectives when appropriate.

§ 3.5. The initial treatment plan shall be developed within two weeks after admission and shall reflect criteria for determining client's acceptability into the program on a permanent basis.

§ 3.6. An ongoing individualized treatment plan shall be developed and completed within 30 days from the date of admission.

§ 3.7. For services provided in a hospital setting where the intended length of stay is seven days or less a stabilization plan shall be developed within 24 hours after admission.

§ 3.8. Complete, written policies and procedures for case review shall be developed and implemented which shall include provisions for:

1. Ongoing review to determine whether records contain all the service documentation and release of information documents required by the program;

2. Review and update of the appropriateness of the treatment goals; *and*

3. Review and update of contact with parent(s) or legally authorized representative.

§ 3.9. There shall be documentation of treatment plan reviews which shall include:

1. Identification of person responsible for case coordination;

2. Documentation of client needs being addressed by services procured from outside the program network including resources utilized, times, places, and duration of treatment intervention being provided; *and*

3. Documentation of both ~~services being rendered from within the program boundary and of services being offered elsewhere in the system~~ *direct services and generic services* .

PART IV.
SERVICES.

Article 1.
Preplacement Services.

The following sections are additional requirements to the Core Standards, Part V, Article 5.

§ 4.1. There shall be preplacement services which shall include:

1. Establishing formal, ongoing arrangements with referring agencies or people to provide for continuity and coordination of referrals; *and*

2. Dissemination of information regarding the program and required participation by client, referral service,

parent(s) or legally authorized representative.

Article 2.
Stabilization Services.

§ 4.2. The facility shall have written policies and procedures for stabilization services. Stabilization services shall include:

1. Crisis intervention activities which shall include:

a. Telephone counseling;

b. Face-to-face counseling;

c. Referral and transfer to other agencies, as appropriate; *and*

d. Follow-up, as appropriate;

2. Program policies and procedures which shall be designed to permit rapid response to client crises;

3. Services which shall be available 24-hours a day, seven days a week; *and*

4. Arrangements for referring or receiving clients with:

a. Hospitals;

b. Law-enforcement officials;

c. Physicians, clergy and schools; *and*

d. Mental health facilities.

5. Emergency medical services which shall only be provided within a hospital setting; *and*

6. Stabilization programs in nonhospital settings which shall have the capability for arranging transportation to a local hospital or other emergency service.

Article 3.
Growth Services.

§ 4.3. There shall be written policies and procedures for the provision of growth services which shall include:

1. Social skill training;

2. Task and skill training including on-site training;

3. The content of social skills, and task and skill training shall provide for, but not be limited to:

a. Self-care skills;

b. Educational function skills;

c. Family and interpersonal skills;

d. Decision-making and problem-solving skills; *and*

e. Independent living skills.

Article 4.
Counseling/Psychotherapy.

The following sections are additional requirements to the Core Standards, Part V, Article 15.

§ 4.4. There shall be written policies and procedures for the delivery of counseling and psychotherapeutic services.

A. The provision of counseling and psychotherapeutic services shall be in compliance with all state statutes regarding these services.

B. The use of these services shall be based on an assessment of the intensity and frequency of the problem behavior, ~~and/~~ or the severity of the emotional problem experienced by the youth.

C. Each program shall have formal arrangements for the evaluation, assessment, and treatment of the mental health needs of their clients.

Article 5.
Case Coordination.

§ 4.5. Each program shall have written policies and procedures for the provision of activities aimed at linking the service system to the client and coordinating the various system components in order to achieve a successful outcome. These activities shall include:

1. The assignment of a case coordinator to each client prior to treatment planning;

2. The ongoing process of assessing client's general needs through the use of program reports and evaluation information provided by each service;

3. Overseeing the continuity and range of services delivered to ensure systematic and individualized treatment plans;

4. Developing and reviewing the specific individualized treatment plans with additions and deletions in service delivery on a quarterly basis;

5. Coordination and referral linkage at the time of discharge to all direct and generic services; *and*

6. Identification of individual or agency responsible for follow-up and aftercare.

BOARDS OF NURSING AND MEDICINE

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors. The Boards of Nursing and Medicine will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation:
VR 465-07-1. Board of Medicine.
VR 495-02-1. Board of Nursing. Regulations Governing the [~~Certification~~ *Licensure*] of Nurse Practitioners.

Statutory Authority: § 54.1-2957 of the Code of Virginia.

Effective Date: June 22, 1989

Summary:

Section 54.1-2957 of the Code of Virginia authorizes the joint promulgation of regulations governing the licensure of nurse practitioners by the Boards of Nursing and Medicine. The 1988 session of the General Assembly enacted legislation that recodified Title 54 as Title 54.1. These statutes were effective on January 1, 1989. As a result, technical changes in the regulations governing the licensure of nurse practitioners were necessary. In addition to changing the Code citations, the recodified § 54.1-2957 uses the words "license" and "licensure" in place of "certificate" and "certification." The same changes have been made throughout the regulations except where certificate or certification refers to professional credentials conferred by an organization or society. In § 2.6 B 1 b, the words "as a registered nurse" have been added for clarity since the word "licensed" also applies to the nurse practitioner credential.

Preamble:

Authority granted under these regulations may be expanded or restricted, or totally revoked, if the boards are of the opinion that the public health, safety or welfare is not being served or protected by the regulations. It should be clearly understood by each applicant and the recipient of certification as a nurse practitioner that the conditions stated herein are a part of such certification.

All provisions of these regulations are to be narrowly construed. Nothing herein is to be deemed to limit or prohibit a nurse from engaging in those activities which normally constitute the practice of nursing or those which may be performed by persons without the necessity of a license from the Board of Nursing.

VR 465-07-1. Board of Medicine.
VR 495-02-1. Board of Nursing. Regulations Governing the Licensure of Nurse Practitioners.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Accredited program" means a nurse practitioner education program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, American Nurses' Association or National League for Nursing.

"Approved program" means a nurse practitioner education program that meets the criteria set forth in these regulations.

"Boards" means the Virginia ~~State~~ Board of Nursing and the Virginia ~~State~~ Board of Medicine.

~~*"Certified nurse practitioner"* means a registered nurse who has met the requirements for certification as stated in Part II of these regulations and has been certified by the boards.~~

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II of these regulations and has been licensed by the boards.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

"National certifying body" means a national organization that has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in these regulations as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a ~~certified~~ *licensed* nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the physician(s) and the nurse practitioner(s) participating in an arrangement for treatment of clients, that delineates and directs the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the nurse practitioner(s)

in the care and management of clients.

"Supervision" means that the physician documents being readily available for medical consultation by the ~~certified~~ *licensed* nurse practitioner or the client, with the physician maintaining ultimate responsibility for the agreed upon course of medical treatment.

§ 1.2. Delegation of authority.

A. The boards hereby delegate to the Executive Director of the Virginia ~~State~~ Board of Nursing the authority to issue the initial ~~certification~~ *licensure* and the biennial renewal of such ~~certification~~ *licensure* to those persons who meet the requirements set forth in these regulations. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the ~~certification~~ *licensure* of nurse practitioners shall be maintained in the office of the Virginia ~~State~~ Board of Nursing.

§ 1.3. Committee of the Joint Boards of Nursing and Medicine.

The presidents of the Boards of Nursing and Medicine respectively shall each appoint three members from their boards to the Committee of the Joint Boards of Nursing and Medicine. The purpose of this committee shall be to administer the Regulations Governing the ~~Certification~~ *Licensure* of Nurse Practitioners.

§ 1.4. Advisory Committee on the ~~Certification~~ *Licensure* of Nurse Practitioners.

The Committee of the Joint Boards of Nursing and Medicine, in its discretion, may appoint an Advisory Committee on the ~~Certification~~ *Licensure* of Nurse Practitioners. Such an advisory committee shall be comprised of four licensed physicians and four ~~certified~~ *licensed* nurse practitioners, of whom one shall be a nurse midwife practitioner, one shall be a nurse anesthetist practitioner and two shall be nurse practitioners from other categories. Appointment to the advisory committee shall be for four years, with one physician and one ~~certified~~ *licensed* nurse practitioner appointed annually. Members may be appointed for one additional four-year period.

§ 1.5. Fees.

Fees required in connection with the ~~certification~~ *licensure* of nurse practitioners are:

1. Application $50
2. Biennial ~~certification~~ *licensure* renewal $30
3. Reinstatement of ~~certification~~ *licensure* $25
4. Verification of ~~certification~~ *licensure* to another jurisdiction $25
5. Duplicate ~~certification~~ license $10
6. Return check charge $15

PART II.
~~CERTIFICATION.~~ *LICENSURE.*

§ 2.1. ~~Certification~~ *Licensure* , general.

A. No person shall perform services as a nurse practitioner in the Commonwealth of Virginia except as prescribed in these regulations and when ~~certified~~ *licensed* by the Joint Boards of Nursing and Medicine.

B. The boards shall ~~certify~~ *license* applicants who meet the qualifications for ~~certification~~ *licensure* as set forth in § 2.3 of these regulations.

§ 2.2. Categories of ~~certified~~ *licensed* nurse practitioners.

A. The boards shall ~~certify~~ *license* nurse practitioners in the following categories:

1. Adult nurse practitioner
2. Family nurse practitioner
3. Pediatric nurse practitioner
4. Family planning nurse practitioner
5. Obstetric/Gynecologic nurse practitioner
6. Emergency room nurse practitioner
7. Geriatric nurse practitioner
8. Certified registered nurse anesthetist practitioner
9. Certified nurse midwife practitioner
10. School nurse practitioner
11. Medical nurse practitioner
12. Maternal child health practitioner
13. Neonatology nurse practitioner
14. Women's health care practitioner.

B. Other categories of nurse practitioners shall be ~~certified~~ *licensed* if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of these regulations.

§ 2.3. Qualifications for initial ~~certification~~ *licensure* .

A. An applicant for initial ~~certification~~ *licensure* as a

nurse practitioner shall:

1. Be currently licensed as a registered nurse in Virginia; and

2. Submit evidence of completion of an educational program designed to prepare nurse anesthetists, nurse midwives or nurse practitioners that is either:

a. Approved by the boards as provided in §§ 4.1 through 4.4 of these regulations; or

b. Accredited by an agency identified in § 1.1 Definitions, "Accredited Program"; and

3. Submit evidence of professional certification by an agency identified in § 2.4 of these regulations as an agency accepted by the boards; and

4. File the required application; and

5. Pay the application fee prescribed in § 1.5 of these regulations.

B. Provisional ~~certification~~ *licensure* .

Provisional ~~certification~~ *licensure* may be granted to an applicant who satisfies all requirements of § 2.3 of these regulations with the exception of § 2.3.A.3 only until the release of the results of the first national certifying examination for which he is eligible following his application.

§ 2.4. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

1. American College of Nurse Midwives for nurse midwife practitioners;

2. American Nurses' Association for nurse practitioners;

3. Council on Certification of Nurse Anesthetists for nurse anesthetist practitioners;

4. National Board of Pediatric Practitioners and Associates for nurse practitioners; and

5. Nurses' Association of the American College of Obstetricians and Gynecologists Certification Corporation for nurse practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided that the professional certification is awarded on the basis of:

1. Completion of an educational program that meets the criteria of Part IV of these regulations; and

2. Achievement of a passing score on an examination.

§ 2.5. Renewal of ~~certification~~ *licensure* .

A. ~~Certification~~ *Licensure* of a nurse practitioner shall be renewed biennially at the same time the license to practice as a registered nurse in Virginia is renewed.

B. The application for renewal of the ~~certification~~ *license* shall be mailed by the committee to the last known address of each nurse practitioner.

C. The nurse practitioner shall complete the application and return it with the ~~certification~~ *license* renewal fee prescribed in § 1.5 of these regulations.

§ 2.6. Reinstatement of certification.

A. Reinstatement of lapsed ~~certification~~ *license* .

1. An applicant for reinstatement of lapsed ~~certification~~ *license* shall:

a. File the required application and fee;

b. Be currently licensed as a registered nurse in Virginia; and

c. Provide evidence of current professional certification or, if applicable, licensure or certification in another jurisdiction.

B. Reinstatement of ~~certification~~ *license* following suspension or revocation.

1. An applicant for reinstatement of ~~certification~~ *license* following suspension or revocation shall:

a. Petition for a hearing pursuant to the Administrative Process Act, § 9-6.14:12 of the Code of Virginia, before a committee of the boards; ~~and~~

b. Present evidence that he is currently licensed ~~to practice nursing~~ *as a Registered Nurse* in Virginia; and

c. Present evidence that he is competent to resume practice as a ~~certified~~ *licensed* nurse practitioner in Virginia.

PART III.
PRACTICE OF ~~CERTIFIED~~ *LICENSED* NURSE PRACTITIONERS.

§ 3.1. A ~~certified~~ *licensed* nurse practitioner shall be authorized to engage in practices constituting the practice of medicine under the supervision and direction of a licensed physician in accordance with § 3.2 of these regulations.

§ 3.2. The practice of ~~certified~~ *licensed* nurse practitioners shall be based on specialty education preparation as outlined in Part IV of these regulations and in accordance with written protocols as defined in § 1.1 of these regulations.

§ 3.3. A certified registered nurse anesthetist practitioner shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists and under the supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry, or a doctor of medicine or a doctor of osteopathy.

§ 3.4. A certified nurse midwife practitioner shall practice in accordance with the Standards for the Practice of Nurse-Midwifery defined by the American College of Nurse Midwives.

§ 3.5. Practice as a ~~certified~~ *licensed* nurse practitioner shall be prohibited if:

1. The ~~certification is~~ *license has* lapsed; or

2. The ~~certification~~ *license* is revoked or suspended.

PART IV.
CRITERIA FOR APPROVAL OF NURSE PRACTITIONER EDUCATION PROGRAMS.

§ 4.1. Criteria for program approval.

The committee may delegate to the staff of the committee the authority to approve nurse practitioner education programs that meet the following criteria.

A. Administration.

1. The nurse practitioner education program shall be offered either:

a. By a nationally accredited school of nursing that offers a master's degree in nursing; or

b. Jointly by a nationally accredited school of medicine and a nationally accredited school of nursing that offers a master's degree in nursing.

2. The authority and responsibility for the conduct of the program shall be vested in a nurse educator or coadministered by a physician and a nurse educator who hold faculty appointments at the controlling institution.

3. The controlling institution shall provide each student who successfully completes the program a certificate of completion or equivalent official document.

B. Philosophy and objectives.

There shall be clearly written statements of philosophy and objectives of the program that shall include a description of the category of nurse practitioner being prepared.

C. Faculty.

1. Nurse faculty shall include nurse practitioners each currently certified in the area of specialization in which he is teaching.

2. Medical faculty shall include currently licensed physicians each having preparation in his specialty area.

D. Curriculum.

1. The program shall be at least one academic year in length including planned clinical practice under the direction of a preceptor.

2. Course descriptions and objectives shall be available in writing.

3. The curriculum shall provide:

a. Instruction in the biological, behavioral, medical and nursing sciences relevant to practice as a nurse practitioner in the specialized field;

b. Instruction in legal, ethical and professional responsibilities of a nurse practitioner; and

c. Supervised clinical practice of those skills essential for a nurse practitioner in the specialized field.

4. Major curriculum changes shall be approved by the boards.

§ 4.2. Denial of approval of programs.

Approval will be denied if the program does not meet the criteria set forth in § 4.1 of these regulations. The controlling institution may request a hearing before the Committee, and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

§ 4.3. Continued approval of programs.

Each program shall be subject to periodic review by the boards to determine whether standards for approval are being maintained.

§ 4.4. Withdrawal of approval.

A. If the boards determine that an approved program is not maintaining the standards set forth in these regulations, the controlling institution shall be given a reasonable period of time to correct the identified deficiencies.

B. If the controlling institution fails to correct the identified program deficiencies within the time specified, the boards shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act.

§ 4.5. Exemptions from program approval requirements.

Programs accredited by any agency listed in the definition of accredited program in § 1.1 of these regulations are exempt from the program approval requirements of these regulations.

PART V.
DISCIPLINARY PROVISIONS.

§ 5.1. Grounds for disciplinary action against the ~~certification~~ *license* of a ~~certified~~ *licensed* nurse practitioner.

A. The boards may deny ~~certification~~ *licensure* or ~~recertification~~ *relicensure* , revoke or suspend ~~certification~~ *the license* , or place on probation, censure or reprimand a nurse practitioner upon proof that the nurse practitioner:

1. Has had his license to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly held himself out or represented himself to the public that he is a physician, or is able to, or will practice independently of a physician;

3. Has exceeded his authority as a ~~certified~~ *licensed* nurse practitioner;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;

5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material; or

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs.

§ 5.2. Hearings.

A. The provisions of the Administrative Process Act shall govern proceedings on questions of violation of § 5.1 of these regulations.

B. The Committee of the Joint Boards of Nursing and Medicine shall conduct all hearings prescribed herein and shall take action on behalf of the boards.

C. When a person's license to practice nursing has been suspended or revoked by the Board of Nursing, the nurse practitioner ~~certification~~ *license* shall be suspended pending a hearing simultaneously with the institution of proceedings for a hearing.

D. Sanctions or other terms and conditions imposed by consent orders entered by the Board of Nursing on the license to practice nursing may apply to the nurse practitioner ~~certification~~ *license* , provided the consent order has been accepted by the Committee of the Joint Boards of Nursing and Medicine.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-22-02. Standards and Regulations for Licensed Homes for Adults.**

Statutory Authority: §§ 63.1-174 and 63.1-182.1 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

This regulation lists the standards that homes for adults facilities licensed by the Department of Social Services must meet. Selective revisions were made to this regulation in the following areas: introduction, management and personnel, admission and discharge policies, services, records, buildings and grounds, and fire and emergency protection.

As a result of public comment there were three substantial changes made after the regulation was published in the proposed version. They are as follows:

1. The proposal which addressed a mandatory training requirement of 20 hours per year for homes for adults administrators was relaxed to 12 hours per year. (§ 2.5)

2. The proposal which required that two hours of activity time be provided daily to homes for adults residents was revised to 11 hours per week with at least one hour of activity provided daily. (§ 4.55)

3. The proposal which would require homes for adults facilities to have $500,000 in liability insurance was withdrawn. (§ 5.30)

VR 615-22-02. Standards and Regulations for Licensed Homes for Adults.

PART I.
INTRODUCTION.

Article 1.

Definitions.

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

"Active assisted range of motion" means that, by instruction, example, and actual support of the limb when necessary, the resident is helped to move each joint through the full range of motion available. No force is used at any time; the resident is simply assisted in holding up the weight of the limb. Its purpose is to prevent contractures and limitations of movement.

"Active range of motion" means that, by instruction and example, the resident moves each joint through the full range of movement possible without assistance. Its purpose is to prevent contractures and limitations of movement.

"Administrator" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the facility, including compliance with all Standards and Regulations for Licensed Homes for Adults.

"Administer medication" means to open a container of medicine or to remove the prescribed dosage and to give it to the resident for whom it is prescribed.

Section [~~54-524.65~~ *54.1-3408*] of the Code of Virginia states that only people authorized by state law may administer drugs. People authorized to administer medicine include licensed physicians, registered nurses, licensed practical nurses, pharmacists, physicians' assistants, and other individuals who meet the requirements of the law. In addition to these persons designated in law, a physician may choose to designate, in writing, a person who does not meet the requirements of the law to be his or her authorized agent. This permits the person to administer medicine legally to that physician's designated patients, in accordance with such a physician's instructions.

* *"Ambulatory"* means the condition of a person who is either independently mobile or semi-mobile as defined below.

"Assisted exit" means that in order to exit a building within three minutes in an emergency the resident must receive repeated verbal prompts or commands or be physically touched, or moved by another person or object.

"Bedfast" means the condition of a person, as certified by a physician, who is confined or restricted to bed for a prolonged or indefinite period of time. Persons for whom a physician has prescribed bedrest because of a short term illness (e.g. cold, flu, virus, etc.) are not considered to be bedfast. No person who is bedfast shall be admitted for care. Residents who become bedfast may remain in care providing the provisions of §§ 3.8 and 5.14 of these standards and regulations are met.

"Day-care center for adults" means a facility, which is either operated for profit or which desires licensure, for four or more aged, infirm or disabled adults, which is operated during a part of the day only, which provides supplementary care and protection of individuals who reside elsewhere except (i) a facility or portion of a facility licensed by the State Board of Health or the State Department of Mental Health , ~~and~~ Mental Retardation , *and Substance Abuse Services* , and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage (§ 63.1-172C of the Code of Virginia). Day-care centers for adults are subject to licensure by a different set of standards.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee of the Virginia Department of Social Services, acting as the authorized agent in carrying out the duties specified in the Virginia Code.

"Director" means the Director of the Virginia Department of Social Services, also known as the Commissioner of Social Services.

"Discharge" means a planned, facility-initiated termination of services for a resident which results in a change of address for the resident.

"Distribute" means to give a container of medicine to a resident for whom it is prescribed so that he may take his own medicine from the container.

"Emergency" means a situation where the resident's behavior is unmanageable to the degree an immediate danger is presented to the safety of the resident or others or a situation or condition which presents a clear and present danger to resident health and safety.

"Essential activities of daily living" means eating, walking, ascent and descent of stairs, dressing, all aspects of personal hygiene and grooming, administering medication which would normally be self-administered, getting in and out of bed, management of personal affairs, control of visitors, use of telephone, arranging for transportation, reading, writing, etc.

"Health care providers" means physicans, dentists, pharmacists, home health care agencies, hospitals, nursing homes, clinics, ambulance services, health care supplies, etc.

"Homes for adults" means any place, establishment, or institution, public or private, including any day-care center for adults, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled, except (i) a facility or portion of a facility licensed by the State Board of Health or the State Department of Mental Health , ~~and~~ Mental Retardation , *and Substance Abuse Services* , but including any portion of such facility not so licensed, and (ii) the home or

residence of any individual who cares for or maintains only persons related to him by blood or marriage Included in this definition are any 2 or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of 4 or more aged, infirm or disabled adults. (§ 63.1-172A of the Code of Virginia)

"Human subject research" means "any medical or psychological research which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects and which departs from the application of those established and accepted methods appropriate to meet the subject's or subjects' needs but does not include (i) the conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice, (ii) epidemiological investigations, or (iii) medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life." (§ 37.1-234 of the Code of Virginia)

"Independent living environment" means one in which the resident or residents perform all essential activities of daily living for themselves without requiring the assistance of any staff member in the home for adults.

"Independent living status" means that the resident is assessed as capable of performing all essential activities of daily - living for himself without requiring the assistance of any staff member in the home for adults. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity this shall not be considered in determining independent status.)

* *"Independently mobile"* means the condition of a person who is mentally and physically capable of making an unassisted exit from the home in an emergency. The ability to ascend and descend stairs (if present in any necessary exit path) is an essential part of this condition. The determination of whether a person is independently mobile shall be based on information contained in the medical report. (See § 5.7.2.b(5))

"Household members" means any person domiciled in a home for adults other than residents or staff.

"Legal guardian" means an individual who has legal control and management of the person, or the property, or of both the person and the property of the resident. A legal guardian is appointed by a court. A legal guardian of the person is appointed to see that the resident has proper care and supervision in keeping with his needs. A legal guardian of the property is appointed to manage the financial affairs in the best interest of the resident.

"Licensee" means any person, association, partnership or corporation to whom the license is issued.

"Maintenance [~~*and*~~ *or*] *care"* means protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual (§ 63.1-172B of the Code of Virginia). [~~*This includes assistance with the activities of daily living which the recipient has difficulty performing.*~~ *Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight." This includes assistance with the activities of daily living which the recipient has difficulty performing.*]

"Mechanical restraint" means any device other than the body used to restrict the free movement of a resident (e.g., supportive vests) and applied in such a way that the resident cannot release himself.

* *"Nonambulatory"* means the condition of a person who, because of physical or mental impairment, requires an assisted exit from the building in an emergency. The determination of whether a person is nonambulatory shall be based on information contained in the medical report. (See § 5.7.2.b.5) or shall be determined by the demonstrated inability of a semi-mobile person to exit the building in three minutes where applicable (See §§ 3.9.C ad 5.7.2.b.(6)). Persons who are nonambulatory may be accepted for care and residents who become nonambulatory may remain in care providing the provisions of § 3.9 of these standards and regulations are met.

"Nursing ~~and convalescent~~ *care"* means ~~care given because of prolonged illness or defect, or during recovery from injury or disease, which includes any and all of the nursing procedures commonly employed in waiting on the sick such as administration of medicines, preparation of special diets, giving of bedside care, application of dressings and bandages, and the carrying out of treatments prescribed by a duly licensed practitioner of medicine.~~ *intermediate or skilled nursing care routinely provided in a facility subject to licensure by the Virginia Department of Health.*

"Payee" means an individual other than the legal guardian who has been designated to receive and administer funds belonging to a resident in a home for adults. A payee is not a legal guardian unless so appointed by the court.

"Permanent transfer" means [~~*to be discharged from one caregiving facility to be admitted to another caregiving facility. (A permanent transfer does not include instances when a resident is temporarily hospitalized and the facility is holding the resident's room until his return.)*~~ *when a resident is released from one caregiving facility to be admitted to another and is not expected to return. This includes releases made within a facility to another program, e.g., independent living, nursing home, etc.*]

"Physical restraint" means holding a resident's body

with one's own body in such a way that the resident is unable to move freely.

"Post-hospitalized person" means any aged, infirm or disabled adult who is being discharged from a state program for the mentally ill or mentally retarded and for whom direct placement is sought in a home for adults by the state facility, local welfare/social services department, local community mental health and mental retardation services board, family, legal guardian, or any other responsible party.

"Relocation" means a planned, facility or resident-initiated housing reassignment of a resident, either temporary or permanent, within the licensed home for adults.

"Resident" means any aged, infirm, or disabled adult residing in a home for adults for the purpose of receiving maintenance and care.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regulatory or intermittently. Homes offering this type of care are subject to these standards and regulations.

"Responsible person/party" means the legal guardian, payee, family member or any other individual who has arranged for the care of the resident and assumed this responsibility. The responsible person/party may or may not be related to the resident. A responsible person/party is not a legal guardian unless so appointed by the court.

* *"Semi-mobile"* means the condition of a person who is:

1. Mentally and physically capable in an emergency of always exiting within three minutes from any area of the home available to semi-mobile residents with the help of a wheelchair, walker, cane, prosthetic device, or with the aid of a single verbal command;

and

2. Able to ascend and descend stairs (if present in any necessary exit path from areas available to semi-mobile residents.)

The determination of whether a person is semi-mobile shall be based upon information contained in the medical report and upon timed observation of the resident's ability to exit a building within three minutes where applicable. (See §§ 3.9.C and 5.7.2.b.(6))

"Sponsor" means an individual, association, partnership or corporation having responsibility for planning and operating a facility subject to licensure. The licensee is the sponsor of a home for adults. The sponsor may not, in all cases, be the owner of the physical plant (buildings) and/or real estate in or on which the home for adults is located. In these instances the term "sponsor" as defined here and used in these standards and regulations is considered to be the person, partnership, association or corporation who owns the enterprise less the physical plant and/or real estate.

"Transfer" means to be released from one caregiving facility to be admitted to another caregiving facility.

"Withdrawal" means a planned resident or resident representative-initiated termination of services which results in a change of address for the resident.

*As used in these standards and regulations these are not medical definitions. They are related to the placement of aged, infirm, or disabled adults in appropriate buildings with regard to fire safety and their ability to evacuate buildings in an emergency.

Article 2.
Legal Base.

§ 1.2. Chapter 9, Title 63.1, of the Code of Virginia sets forth the responsibility of the Department of Social Services for the licensure of homes for adults, including the responsiblity of the State Board of Social Services for the development of regulations containing minimum standards and requirements.

It is a misdemeanor to operate a home for adults without a license or to serve more residents than the maximum number stipulated on the license. (§ 63.1-182 of the Code of Virginia)

Article 3.
Applicability.

§ 1.3. These Standards and Regulations for Licensed Homes for Adults apply to any facility:

1. That is operated or maintained for the maintenance or care of four or more adults in one or more locations who are aged, infirm or disabled.

2. That assumes responsibility, either directly or through contracted agents, for the maintenance or care of four or more adults who are aged, infirm or disabled.

§ 1.4. The following types of facilities are not subject to licensure as a Home for Adults:

1. A facility or portion of a facility licensed by the State Board of Mental Health, Mental Retardation and Substance Abuse Services.

2. The home or residence of an individual who cares for or maintains only persons related to him by blood or marriage.

3. A facility or portion of a facility, licensed as a

children's residential facility under § 63.1-185 et seq. of the Code of Virginia, serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped.

PART II.
MANAGEMENT AND PERSONNEL.

Article 1.
The Licensee.

§ 2.1. The licensee shall be responsible for complying with all standards and regulations for Licensed Homes for Adults and terms of the license issued by the department.

§ 2.2. The licensee shall meet the following requirements:

1. The licensee shall give evidence of financial responsibility.

2. The licensee shall be of good character and reputation.

3. The licensee shall be able to protect the physical and mental well-being of residents.

4. The licensee shall keep such records and make such reports as required by these standards and regulations for Licensed Homes for Adults. Such records and reports may be inspected at any reasonable time in order to determine compliance with these standards and regulations.

5. The licensee shall meet the qualifications of the administrator if he assumes those duties.

§ 2.3. A home for adults sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

Article 2.
The Administrator.

§ 2.4. Each home shall have an administrator. This does not prohibit the administrator from serving more than one facility.

§ 2.5. Qualifications of administrator.

A. The administrator shall be at least 18 years of age.

B. He shall be able to read, to write, and to understand these standards and regulations.

C. He shall be able to perform the duties and to assume the responsibilities required by these standards and regulations.

D. Any person who assumes the duties of the administrator after January 1, 1980, shall be a high school graduate or shall have a General Education Development Certificate (G.E.D.), or shall have completed one full year of successful experience in caring for adults in a group care facility, such as a home for adults, a nursing home, a hospital or a day-care center for adults.

E. [~~He~~ *The administrator*] *shall attend* [~~20~~ *12*] *hours of training related to management or operation of a residential facility for adults* [*or client specific training needs,*] *within each 12-month period. The training sessions may be inservice or offered outside the facility. Documentation of attendance shall be retained at the facility.*

~~E.~~ *F.* He shall meet the requirements stipulated for all staff in § 2.10.

§ 2.6. Duties of the administrator.

It shall be the duty of the administrator:

1. To oversee the day-to-day operation of the home, which shall include, but not be limited to, responsibility for:

a. Services to residents;

b. Maintenance of buildings and grounds;

c. Record keeping;

d. Employment, training and supervision of personnel.

2. To protect the safety and physical, mental and emotional health of residents.

3. To be familiar with and to assure compliance with these standards and regulations.

4. To post the current license at all times at a place in the building that is conspicuous to the public.

§ 2.7. Either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week.

§ 2.8. In the absence of the administrator or the designated assistant, a responsible adult who is able to read and write shall be delegated the duties of the administrator, so that service to residents shall not be interrupted. This person shall be capable of protecting the physical and mental well-being of the residents. He shall not be a resident.

Article 3.
Personnel.

§ 2.9. Staffing.

A. There shall be enough staff on duty at all times to assure compliance with these standards and regulations. This number shall be determined by:

1. The number of residents;

2. The physical and mental conditions of the residents;

3. The services to be provided;

4. The size and layout of the building(s); and

5. The capabilities and training of the employees.

B. There shall be sufficient staff on the premises at all times to implement the emergency fire plan including evacuation of those residents who are nonambulatory if such evacuation is included in the plan. (See § 9.4)

C. A responsible adult, other than a resident, shall be in each building at all times that residents are present and shall be responsible for their care and supervision.

D. In homes licensed to care for 20 or more residents under one roof, there shall be at least one staff member awake and on duty under that roof during the night hours.

E. In homes licensed to care for 20 or more residents under one roof, the provisions of either 1 or 2, below shall be met.

1. Staff shall make rounds at least once each hour to monitor for emergencies. These rounds shall begin when the majority of the residents have gone to bed each evening and shall terminate when the majority of the residents have arisen each morning.

a. A written log shall be maintained showing the date and time rounds were made and the signature of the person who made rounds.

b. Logs for the past three months shall be retained.

c. These logs shall be subject to inspection by the department.

or

2. There shall be a signaling device or intercom or a telephone which may be activated by the resident from his room or from a connecting bathroom which shall terminate at the staff station and which shall permit staff to determine the origin of the signal. (See § 7.4)

F. If emergency ambulance service is not available within 15 minutes travel time or if there is not a physician, registered nurse, or licensed practical nurse available within 15 minutes travel time, there shall be at least one staff member on the premises at all times who has certification in first aid which has been issued within the past three years by the Red Cross, a community college, a hospital, a volunteer rescue squad, a fire department, or a similarly approved program.

G. There shall be at least one staff member on the premises at all times who has certification in cardiovascular pulmonary resuscitation (CPR) issued within the current year by the Red Cross, a community college, a hospital, a volunteer rescue squad, a fire department or a similarly approved program. The CPR certificate must be renewed annually.

§ 2.10. Qualifications of all staff, including the administrator.

All staff members shall be:

1. Of good character;

2. Physically and mentally capable of carrying out assigned responsibilities;

3. Considerate and tolerant of aged and disabled persons;

4. Clean and well-groomed; and

5. Able and willing to accept supervision and training.

§ 2.11. Training and orientation.

A. All employees shall be made aware of:

1. The purpose of the facility;

2. The services provided;

3. The daily routines; and

4. Required compliance with standards and regulations for Licensed Homes for Adults as it relates to their duties and responsibilities.

B. All personnel shall be trained in the relevant laws, standards and regulations, and the home's policies and procedures sufficiently to implement the following:

1. Emergency plans for the facility; (See § 9.4)

2. Techniques of complying with fire and disaster plans including evacuating residents when applicable;

3. Use of the first-aid kit, and knowledge of its location;

4. Confidential treatment of personal information;

5. Observance of the rights and responsibilities of residents;

6. Procedures for detecting and reporting suspected

abuse, neglect, or exploitation of residents to the appropriate local department of social services;

(NOTE: Section 63.1-55.3 of the Code of Virginia requires anyone providing full- or part-time care to adults for pay on a regular basis to report suspected adult abuse, neglect, or exploitation.)

7. Specific duties and requirements of their positions.

C. All personnel who have primary responsibilities for resident care shall be trained to have general knowledge in the care of aged, infirm or disabled adults with due consideration for their individual capabilities and their needs.

D. The home shall provide training opportunities at least annually for employees with primary responsibility for resident care.

1. These training opportunities shall be provided through in-service training programs or institutes, workshops, classes, or conferences related to the care of aged, infirm or disabled adults.

2. A notation of this training shall be made in the employee's record, as required by § 5.26.10 of these standards and regulations.

E. Training required for staff in homes that accept/have in care residents with special needs.

1. Aggressive residents.

a. The licensee/administrator of a facility which admits residents with a medical history of aggressive behavior or of dangerously agitated states shall first provide or obtain training in methods of dealing with aggressive residents for direct care staff involved in the care of such residents.

(NOTE: Homes for adults having valid licenses on the date these standards become effective and having such residents in care shall have one year from the effective date for direct care staff to comply with this standard.)

b. This training shall include, at a minimum, information, demonstration, and practical experience in the prevention of aggressive behavior, self-protection, and the proper application of restraints.

2. Bedfast residents/supportively restrained residents.

a. The licensee/administrator of a facility which has bedfast residents in care or who admits or has in care residents who are supportively restrained shall first provide or obtain for direct care staff involved in the care of such residents appropriate training in caring for their health needs.

(NOTE: Licenses medical personnel, e.g., R.N.'s, L.P.N.'s, are not required to take this training as their academic background deals with this level or care.

b. This training shall include, at a minimum, information, demonstration and experience in the prevention and recognition of decubiti, in active and active assisted range of motion to prevent joint contractures, and the proper techniques for applying and monitoring supportive restraints.

3. The training described in § 2.11.E.1 and 2 shall meet the following criteria:

a. It shall be provided by a qualified health professional.

b. A written description of the content of this training, a notation of the person(s)/agency/organization or institution providing the training and the name(s) of staff receiving the training shall be maintained by the facility.

(NOTE: If the training is provided by the department, only a listing of staff trained and the date of training is required.

4. Should a resident become aggressive or need suppportive restraints or become bedfast while in the facility the training described in § 2.11.E.1 and/or 2 shall be obtained within 30 days.

5. Refresher training and/or the review of written materials/techniques with all direct care staff shall be provided at least annually or more often as needed.

a. The refresher training and/or review of written materials/techniques shall encompass the techniques described in § 2.11E.1 and/or § 2.11.E.2. above.

b. A record of the refresher training and/or review of written materials and a description of the content of the training shall be maintained by the facility.

§ 2.12. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

§ 2.13. Relief staff.

A. A current file of names, addresses and telephone numbers of persons available for duty in the absence of regular personnel shall be maintained;

or

B. There shall be evidence of access to a nurse's aide register.

§ 2.14. Volunteers.

A. Any volunteers used shall:

1. Have qualifications appropriate to the services they render;

2. Be subject to laws and regulations governing confidential treatment of personal information.

B. Duties and responsibilities of all volunteers shall be clearly differentiated from those of persons regularly filling staff positions.

C. At least one staff member shall be assigned responsibility for overall selection, supervision and orientation of volunteers.

PART III.
ADMISSION AND DISCHARGE POLICIES.

Article 1.
Admission Policies.

§ 3.1. All residents shall be 18 years of age or older.

§ 3.2. No person shall be admitted until identifying information has been obtained as set forth in these standards. (See § 5.6)

§ 3.3. No person shall be admitted unless he has had a physical examination by a licensed physician within 30 days prior to the date of acceptance for admission. *When a person is* [~~admitted~~ *accepted*] *for respite care or on an intermittent basis,* [~~a report of physical examination dated within six months of the initial admission date is required.~~ *the initial physical examination report shall be valid for six months.*] The report of such examination shall be on file at the home for adults and shall contain the information required by these standards. (See § 5.7)

§ 3.4. No person who is known to have tuberculosis in a communicable form shall be admitted.

§ 3.5. No person who is in need of nursing [~~or convalescent~~] care shall be admitted.

§ 3.6. No person whose physician has stated in writing that he is incapable of self-administration of medicine shall be admitted or remain in care unless:

1. The physician has signed a statement authorizing an agent at the home to administer medicine; or

2. There is a licensed doctor, registered nurse, licensed practical nurse or physician's assistant available to the home to administer medicine.

§ 3.7. No person who is bedfast shall be admitted for care.

§ 3.8. No resident who becomes bedfast shall remain in the home unless all of the following requirements are met:

1. The physician signs a written statement that:

a. Nursing [~~and convalescent~~] care [~~are~~ *is*] not needed, including the basis for this decision in terms of diagnosis and prognosis;

(NOTE: A nursing [~~or convalescent~~] home license is required if a facility provides nursing [~~and/or convalescent~~] care to two or more nonrelated persons.) (§ 32-298(2) of the Code of Virginia)

b. The needs of the resident can be met in the home for adults; and

2. Complete medical records are kept, including physicians' progress reports obtained at intervals of not more than 90 days (See § 5.14). The reports shall contain the same information required in the written statement described in § 3.8.1.

3. The physician's progress report shall be based on the resident having been seen and examined by a licensed physician, physician's assistant or nurse practitioner at intervals of not more than 90 days. If the examination is performed by a physician's assistant or nurse practitioner the results shall be reviewed by a licensed physician who shall evaluate and sign the required statement.

4. There shall be qualified staff on duty 24 hours a day to meet the needs of the bedfast resident.

5. The facility meets the applicable provisions of § 9.6 of these standards and regulations relating to the housing of nonambulatory residents.

§ 3.9. Admission and retention of nonambulatory and semi-mobile residents.

A. Nonambulatory persons, as defined by these standards, may be admitted to a home for adults when all of the provisons of the following sections of these standards and regulations are met:

1. Section 3.10, which addresses meeting the needs of the resident;

2. Section 5.7.2.a. and b, which address information required in the admissions physical examination;

3. Section 6.18, which addresses building requirements to accommodate nonambulatory residents; and

4. Section 9.6, which addresses housing of nonambulatory residents.

B. Residents who become nonambulatory, as defined by these standards, may remain in care if the provisions of § 3.9.A, 1, 3, and 4 above, are met, as well as the additional provisions of § 5.7.3 and § 5.11 of these standards and regulations. These additional sections address medical

information which is required (See § 5.7.3) or may be required (See § 5.11) on a recurring basis.

C. Semi-mobile residents shall be admitted to or retained in the home only when the following conditions are met:

1. In buildings with a licensed capacity greater than 20, all building code requirements and standards and regulations governing housing for nonambulatory residents shall be met.

2. In buildings with a licensed capacity of twenty or fewer:

a. The resident is permanently assigned to a bedroom that is on the first floor and no more than 50 feet from an exit that is at ground level or ramped.

b. Prior to admission, and during each required fire drill, the resident exhibits the ability to exit the building within three minutes from any area available to semi-mobile residents. This includes the ability to ascend and descend stairs if any are present in an exit path from areas normally to be used by the resident. (See § 5.7.b.(5) and (6))

c. The record of the physical examination contains a statement that the prospective resident is potentially capable of exiting a building within three minutes without adverse medical consequence. (See § 5.7.b (5))

§ 3.10. Only those persons whose needs can be met in a home for adults may be admitted for care.

§ 3.11. At the time of admission, there shall be a written agreement signed by the resident/applicant for admission and/or the legal guardian, or personal representative and by the licensee or administrator. This agreement shall meet the requirements specified in § 5.17 of these standards and regulations.

§ 3.12. Admission of post-hospitalized persons.

The following standards shall apply when a home for adults accepts persons from a state program for the mentally ill or mentally retarded. (These standards do not apply to persons who were accepted for care in homes for adults prior to January 1, 1980.)

A. The home shall enter into a written agreement with the local community mental health and mental retardation services board, a state mental health clinic in those areas not served by such a board, or similar facility or agency within the private sector to make services available to post-hospitalized residents. This agreement shall be a one time agreement which shall cover all post-hospitalized residents who may need and/or desire such services.

(NOTE: The direct clinical services of the local community mental health and mental retardation services board and/or the state mental health clinics are to be provided at no cost to the home for adults. Residents may be charged on a sliding scale based on their ability to pay.)

B. Services to be included in the agreement shall include at least the following:

1. Diagnostic, evaluation and referral services in order to identify and meet the needs of the resident;

2. Outpatient mental health and mental retardation services, including but not limited to recommended aftercare/follow-along services;

3. Services and support to meet emergency mental health needs of a resident.

C. A copy of this agreement shall remain on file in the home and shall be available for inspection by the department.

D. Prior to accepting a post-hospitalized person, the home shall obtain a summary of the aftercare/follow-along service recommendations which pertain to the post-hospitalized person.

(NOTE: This information will be provided by the state facility from which the person is being discharged as part of the admissions physical examination required by § 5.7.1 of these standards and regulations. The state facility will complete this physical examination and will report the results on a form provided by the department.)

E. A copy of this summary of the aftercare/follow-along service recommendations shall be filed in the resident's record, as part of the admissions physical examination report, if he is accepted for care.

F. The home shall request and obtain written progress reports on any post-hospitalized resident receiving services from the local community mental health and mental retardation services board, state mental health clinic or a treatment facility or agency in the private sector, providing release of this information is approved by the resident.

1. These progress reports shall be obtained at least every six months until it is stated in a report that aftercare/follow-along services are no longer needed.

2. This report shall contain at minimum:

a. A statement that continued aftercare/follow-along services are/are not needed;

b. Recommendation, if any, for continued after-care/follow-along services;

c. A statement that the resident's needs can

continue to be met in a home for adults;

d. A statement of any recommended services to be provided by the home for adults.

3. Copies of these progress reports shall be filed in the resident's record and shall be available for inspection by the department.

G. Post-hospitalized persons shall not be accepted for care or remain in care when the home for adults is unable or unwilling to assist the resident in obtaining the services recommended in order to meet the resident's needs.

(NOTE: The resident has the option to refuse recommended aftercare/follow-along services.)

Article 2.
Discharge Policies.

§ 3.13. Under nonemergency conditions, the licensee or administrator shall notify the resident and/or his representative of the planned [*permanent*] relocation, transfer, or discharge at least 14 calendar days prior to the actual transfer discharge date.

§ 3.14. Under emergency conditions, the licensee, administrator, or staff designee shall transfer or discharge the resident as appropriate for health and safety reasons.

A. The resident and/or his representative shall be informed as rapidly as possible, but within 24 hours of the move, of the reasons therefor.

(See § 4.31 for requirements regarding notification of concerned parties in case of illness and injury.)

B. The written statement required by § 3.16 shall be provided within 14 calendar days of the date of emergency transfer or discharge.

§ 3.15. The licensee or administrator shall transfer or discharge a resident from the facility when:

1. The needs of the resident cannot continue to be met for any one or more of the following reasons:

a. The resident needs nursing [~~or convalescent~~] care;

or

b. Sufficient qualified staff are not available to provide necessary services, such as, meet dietary needs, administer medication or provide necessary care and supervision;

or

c. Approved space is not available for nonambulatory residents;

or

d. The resident is physically or verbally abusive to other residents;

or

e. The resident is habitually disruptive and/or creates unsafe conditions;

or

f. Any semi-mobile resident in a home not licensed for nonambulatory residents is unable, at any time or for any reason, to make a three minute exit from any area of the building available to residents, or who at any time impedes others from making a three minute exit in an emergency or drill.

2. The resident requests that other living arrangements be made.

§ 3.16. When a resident is *permanently* transferred or discharged, the licensee and/or administrator shall provide to the resident or his representative a dated signed statement which contains the following information:

1. The date on which the resident and/or his representative was notified of the planned *permanent* transfer or discharge and the name of the representative who was notified.

2. The reason(s) for the *permanent* transfer or discharge.

3. The actions taken by facility staff to assist the resident in making an orderly transfer or discharge.

4. The date of the *permanent* transfer or discharge from the facility and the resident's destination.

~~NOTE:~~ [~~Any transfer lasting less than 10~~ *~~14~~* ~~calendar days shall be considered temporary and § 3.16 shall not apply. Other documentation and notification requirements (See § 4.31), shall be observed.~~]

(NOTE: Primary responsibility for transporting the resident and his possessions rests with the resident and/or his representative.)

§ 3.17. A copy of the written statement required by § 3.16 shall be retained in the resident's record.

§ 3.18. The facility shall adopt a written policy regarding the number of calendar days notice is required when a resident wishes to withdraw from the facility ~~and~~ . *Any required notice of intent to withdraw shall not exceed 45 days.* Notice of this policy shall be incorporated into the residents agreement.

§ 3.19. The resident insofar as he is able, and/or his representative shall participate in plans for relocation, transfer, discharge or withdrawal.

§ 3.20. The licensee or administrator shall provide assistance to the resident and/or his representative in planning and in preparing the resident for relocation, transfer, discharge, or withdrawal. Such preparation shall include discussing with the resident and/or his representative why the relocation, transfer or discharge is necessary and where the resident is being moved.

§ 3.21. When the resident is being transferred or discharged to another facility, the procedures regarding records as set forth in these standards shall be followed. (See § 5.5 B and § 5.8)

PART IV.
SERVICES.

Article 1.
Resident Rights.

§ 4.1. Any resident of a home for adults is entitled to the rights and has the responsibilities as provided for in § 63.1-182.1 of the Code of Virginia (Rights and Resposibilities of Residents in Homes for Adults, and as provided for in these standards and regulations.

§ 4.2. The licensee, and/or administrator shall establish and implement written policies and procedures to be followed by the home in implementing the requirements of § 63.1-182.1 of the Code of Virginia.

These policies and procedures shall be available and accessible to residents, relatives, agencies and the general public.

§ 4.3. The resident is assumed to be able to fully understand and exercise the rights and responsibilities as provided for in § 63.1-182.1 of the Code of Virginia, and these standards and regulations unless a physician determines otherwise.

§ 4.4. If a physician determines that a resident is unable to understand and exercise his rights and responsibilities, his reasons for making such a determination shall be documented in the record.

A. The licensee/administrator shall then require that a responsible person, (See Definition § 1.1) of the resident's choice when possible, be made aware of the rights and responsibilities of the resident and involve him in the decisions which affect the resident in matters relating to the provisions of § 63.1-182.1 of the Code of Virginia.

B. The name of this individual shall be documented in the resident's record.

§ 4.5. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the home.

§ 4.6. The resident has the right to voice and/or file grievances with the home and to make recommendations for changes in the policies and services of the home. The resident shall be protected by the licensee and/or administrator from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.

§ 4.7. The licensee and/or administrator shall establish and implement the procedure(s) the home will follow when a resident files a grievance with the home. The resident shall be notified of this procedure(s) and shall provide dated written acknowledgement of having been so notified.

§ 4.8. The licensee and/or administrator may not establish any rules or policies related to resident conduct and behavior which would abridge the rights of residents, unless such restrictions are clearly in the interest of resident safety and well-being and are reasonable in nature.

§ 4.9. Each home shall make available in an easily accessible place a copy of the rights and responsibilities of residents of homes for adults, as provided for in § 63.1-182.1 of the Code of Virginia.

A. The copy of the resident rights and responsibilities shall contain the following:

1. The name, title, address and telephone number of the licensing supervisor in the regional office of the Virginia Department of Social Services whose office has issued the facility's license,

and

2. The toll-free number of the Virginia Long-Term Care Ombudsman Program and any substate (local) ombudsman program serving the area.

[*3. The toll-free number of the Department for Rights of the Disabled.*]

[~~3.~~ *4.*] The names, titles, addresses and telephone numbers in § 4.9.A.1 [~~and 2~~ *2 and 3*], above, shall be posted in a conspicuous place available to residents and the general public.

B. The home shall utilize one of the following methods in making this copy available to the resident:

1. Post in a conspicuous place in the home a copy of § 63.1-182.1 of the Code of Virginia, "Rights and Responsibilities of Residents of Homes for Adults";

or

2. Provide to each resident and/or his representative a personal copy of § 63.1-182.1 of the Code of Virginia, and post a written notice in a conspicuous place in the home advising how an additional copy may be obtained.

§ 4.10. Research and experimentation.

A. Residents have the right to refuse to participate in human subject research or experimentation or to participate in any research in which their identity can be determined (See Definition, § 1.1)

B. The licensee and/or administrator may release statistical information about the residents of the home without the resident's permission only when names have been deleted and the information has been organized so that individual identities cannot be determined.

C. The licensee and/or administrator shall allow residents to be observed only when the resident and/or his legal guardian have been notified of such observation and its purpose and have given consent.

D. The licensee and/or administrator shall verify that any human subject experimentation or research involving residents is conducted in accordance with applicable state and federal laws and complies with recognized professional human subject experimentation standards.

(NOTE: The licensee/administrator has the option of denying research groups access to the facility.)

§ 4.11. No resident, for reason of mobility status, shall be denied access to the use of living areas equivalent to those available to all residents.

§ 4.12. (Vacant)

§ 4.13. (Vacant)

Article 2.
Personal Care and Supervision.

§ 4.14. The resident shall be assisted to maintain his highest level of independence by being consistently encouraged to function at his highest mental, emotional, physical and social potential.

§ 4.15. Utilizing the resident's health and personal information outlined in §§ 5.6 and 5.7, the licensee and/or administrator shall assess the service needs of prospective residents for the purpose of determining whether the home can meet these needs.

(NOTE: Model checklist assessments detailing basic service needs will be supplied by the department upon request.)

§ 4.16. The completed assessment will be filed in the resident's record upon admission.

§ 4.17. The licensee/administrator or designee shall develop individual service plans to meet the resident's service needs as identified.

(NOTE: Service plans are not required for those residents who are assessed as capable of maintaining themselves in an independent living status.)

A. The plans shall be completed within 45 days after admission and shall include the following:

1. Description of identified need,

2. Notation of actions to be taken to meet identified need and person(s) responsible.

B. The master service plan shall be filed in the resident's record; extracts from the plan may be filed in locations specifically indentified for their retention; e.g. dietary plan in kitchen.

§ 4.18. Assessments and service plans shall be reevaluated continuously as the condition of the resident changes. Formal reassessment and/or plan review shall be documented in the resident's record at least annually.

§ 4.19. The resident shall be encouraged to participate in plans for his care.

§ 4.20. Facility staff shall at all times speak to and treat the resident with courtesy, respect and consideration and as a person of worth, sensitivity and dignity.

§ 4.21. The resident shall be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

1. In the resident's room/bedroom or portion thereof, the resident is permitted to have guest(s) from outside the home or other residents.

2. Each resident shall be permitted to close the door of his room at any time, including during visits with other persons.

3. Employees of the home may not enter a resident's room/bedroom without making their presence known by such means as knocking on the door and/or otherwise announcing their presence and requesting permission to enter the room, except in an emergency situation and in accordance with safety and oversight requirements as found in the [~~Licensing Standards for Homes for Adults~~ *Standards and Regulations for Licensed Homes for Adults*].

4. In a room/bedroom which is occupied by two or more residents, the licensee and/or administrator shall take care to ensure that visiting in such rooms does not unduly interfere with the privacy rights of other occupants of the room.

§ 4.22. The resident shall be allowed privacy for social or business interviews, as well as for visits with persons of his own choice.

§ 4.23. If it is their choice, residents who are married to each other shall be allowed to share a room, space permitting. When space does not permit those residents to share a room, this fact shall be included in the written agreements required by § 5.16 of these standards and regulations.

§ 4.24. Protection from abuse, neglect and exploitation.

A. The resident shall be protected from any form of mental, emotional, physical, sexual and economic abuse or exploitation.

B. The resident shall not be confined in a room with a door secured in such a manner that he cannot open it.

C. The resident shall be protected from any acts of a threatening, degrading and/or demeaning nature.

D. The known needs of the resident shall not be neglected or ignored by the personnel of the home.

§ 4.25. Special supervision and assistance shall be given to those residents who are unable to keep themselves neat and clean. Assistance with personal hygiene shall include care of the body, mouth, teeth/dentures, fingernails, toenails, hair, beard and moustache. Provision shall be made for baths to be taken at least weekly and more often, if needed or desired.

§ 4.26. Residents shall be assisted with the tasks of daily living which they have difficulty performing and shall be accorded ordinary privacy when given assistance in caring for their intimate personal needs.

§ 4.27. Resident's clothing shall be kept clean and in good repair.

Article 3.
Health Care.

§ 4.28. The following standards apply when the resident is in need of health care services (such as mental health counseling, or care of teeth, feet, eyes, ears, etc.).

A. The resident shall be assisted in making appropriate arrangements for the needed care. When mental health care is needed and/or desired by the resident, this assistance shall include securing the services of the local community mental health and mental retardation services board, state mental health clinic or similar facility or agent in the private sector.

B. When the resident is unable to participate in making appropriate arrangements, the resident's family, legal guardian, the cooperating social agency or personal physician shall be notified of the need.

§ 4.29. No medication or diet which has been prescribed by a physician shall be started, changed or discontinued by the facility without an order by the physician. The resident's record shall contain such written order or a notation of the physician's verbal order.

§ 4.30. When the resident suffers serious accident, illness, or medical condition, medical attention shall be secured immediately.

§ 4.31. The next of kin, or other designated person, and any responsible social agency shall be notified within 24 hours of any serious illness, or accident, or medical condition. A notation shall be made in the resident's record of such notice. In addition, this notation must contain a description of the efforts made by the home to involve the resident in making plans for a medical evaluation and treatment.

§ 4.32. If a resident becomes disturbed and unmanageable, the attending physician, next of kin, and/or the responsible party shall be notified promptly.

§ 4.33. Physical or mechanical restraint.

The resident shall be free of any physical or mechanical restraint except in an emergency situation as defined in these standards and regulations or as medically necessary and authorized for the purpose of providing support to a physically weakened resident.

(NOTE: Physical or mechanical restraints shall not be used as a method of behavior management except in an emergency. (See Definition § 1.1)

A. Physical support restraint.

When any type of mechanical restraint is used for support of a physically weakened resident, a physician's written order is required and the following standards must apply:

1. A copy of the physician's written order shall be placed in the resident's records;

2. Additional supervision shall be provided to meet the physical and emotional needs of the resident who is restrained;

3. Each resident restrained for the purpose of providing physical support shall be provided the opportunity for care and exercise whenever necessary and at least once every two hour period the restraint is used. Facility staff shall assist any resident who needs assistance with exercising limbs and changing positions and monitor blood circulation. The care and exercise period shall last for a period of not less than three minutes and shall be noted in the resident's record;

4. Complete medical records shall be kept to include

physician's progress reports obtained at intervals of not more than 90 days; (See § 5.14)

5. The physician's progress reports shall be based on the resident being seen and examined by a licensed physician, physician's assistant or nurse practitioner at intervals of not more than 90 days.

a. These reports shall provide the information required by § 5.14 of these standards and regulations.

b. If the examination is performed by a physician's assistant or nurse practitioner, the results shall be reviewed by a licensed physician who shall evaluate and sign the required statement.

B. Emergency restraint.

The following standards apply each time any type of physical or mechanical restraint is used to control a resident's behavior in an emergency situation (See Definitions of "Emergency" § 1.1).

1. The physician shall be notified immediately.

2. If the physician orders, as part of a treatment program, continued use of restraints for a temporary period, oral orders shall be confirmed in writing.

3. A copy of the written order shall be placed in the resident's record.

4. The resident who is in emergency restraint shall be within sight and sound of staff at all times.

5. Additional supervision shall be provided to meet the physical and emotional needs of the resident who is restrained to include monitoring the resident as needed but at least every 30 minutes to determine the condition of the resident, the proper application of the restraint, and whether there is continuing need for the restraint.

6. The legal guardian, next of kin and/or any responsible social agency shall be notified immediately of the use of such restraints and the response to treatment.

7. Documentation of requirements regarding use of emergency restraints.

a. A notation shall be made in the resident's record showing the date(s) and the reason restraints were used, the time restraints were initially applied who was notified and when and how the notice was given.

b. A notation shall be made in the resident's record of the time and date of each monitoring check (§ 4.32.B.5).

8. If a resident does not respond within two hours to the treatment prescribed by the attending physician and continues to need emergency restraint the resident shall be transferred to a medical facility or monitored in the facility by a mental health crisis team unitl his condition has stabilized to the point that the attending physician documents that restraints are not necessary.

9. If the resident does not respond promptly to the treatment prescribed by the attending physician, and emergency restraint is prescribed for more than two hours a day, for seven days in a row, the resident shall be removed from the home.

§ 4.34. An employee who has received the training required in § 2.11.E shall be on duty in the facility whenever a resident is physically or mechanically restrained.

§ 4.35. Full bedside rails, for any resident, shall be used only on the written order of the attending physician. *When the resident is* [~~*not capable of releasing the bedside rails,*~~ *restricted from getting out of bed through the use of full bedside rails,*] *then all standards pertaining to physical restraints are applicable. (See § 4.33)*

§ 4.36. Should a medical condition arise while the resident is in the home, the resident has the right to refuse recommended medical treatment. [*If the resident refuses,*] *there shall be documentation in the resident's record that the resident's next of kin, or other designated person, was notified of the resident's medical condition and decision* [*within 24 hours*]. The licensee/administrator must then evaluate and document whether ~~he~~ *the facility* can continue to meet the needs of the resident.

(NOTE: This standard shall not be constured to permit the resident to refuse life saving measures in a life threatening situation.

§ 4.37. The resident has the right to select health care providers who are reasonably available in the community and whose services can be purchased by the resident.

§ 4.38. Residents shall be afforded ordinary privacy when they receive medical examination or health related consultation at the home.

Article 4.
Medication.

§ 4.39. No prescription drugs shall be kept in the facility unless they have been legally dispensed and labeled by a licensed pharmacist or unless they are stocked in bulk in a licensed pharmacy located on the premises.

§ 4.40. A medicine cabinet, container or compartment shall be used for storage of medications presecribed for residents.

A. It shall be locked.

B. When in use, it shall be illuminated ~~by 100 footcandles of light as measured by a light meter~~ in order to read container labels, but shall remain darkened when closed.

C. It shall not be located in the kitchen, but in an area free of dampness or abnormal temperatures.

§ 4.41. A resident may be permitted to keep his own medication in a secure place in his room, if the physician's report has indicated that the resident is capable of self-administering medication. This does not prohibit the facility from storing and distributing or administering all medication provided the provisions of §§ 4.42 and 4.43 are met.

§ 4.42. Distribution of medication.

Drugs from a locked medicine cabinet shall be distributed to the residents for whom they are prescribed by a responsible person who is capable of reading the prescription labels. It is not necessary for a physician to designate who may distribute medication.

§ 4.43. Administration of medication.

A. Drugs shall be administered to those residents whose physicians have stated in writing that they are incapable of self-administration of medications, provided the applicable portions of subsections B, C, and D, below are met.

B. Only those persons authorized by state law to administer drugs shall be permitted to do so. This may include licensed doctors, registered nurses, licensed practical nurses, physician's assistants, or other individuals who have met the state requirements to perform these functions.

C. An agent authorized in writing by the physician may administer drugs in accordance with such physician's instructions pertaining to dosage, frequency and manner of administration when the drugs administered would be normally self-administered by a resident, as provided by [§ ~~54-524.65~~ *§ 54.1-3408*] of the Code of Virginia.

D. If a staff member is the authorized agent of a physician, such written authorizations shall be retained by the licensee.

Article 5.
Food Service.

§ 4.44. Catering or contract food service.

A. Catering service or contract food service, if used, shall be approved by the state and/or local health department.

B. Persons who are employed by a food service contractor or catering service and who are working on the premises of the home for adults shall meet the health requirements for the home for adults' employees as specified in these standards and regulations and the specific health requirements for food handlers in that locality.

C. Catered food or food prepared and provided on the premises by a contractor shall meet the dietary requirements set forth in these standards.

§ 4.45. Observance of religious dietary practices.

A. The residents' religious dietary practices shall be respected.

B. Religious dietary laws (or practices) of the administrator or licensee shall not be imposed upon residents unless mutually agreed upon in the admission agreement between administrator or licensee and resident.

§ 4.46. Time interval between meals.

A. Time between the evening meal and breakfast the following morning shall not exceed 15 hours.

B. There shall be at least four hours between breakfast and lunch and at least four hours between lunch and supper.

§ 4.47. [*Minimum meal requirements.*]

[*A.*] A minimum of three meals shall be provided each day.

[*B.*] *Residents with independent living status, who have kitchens* [*equipped with stove, refrigerator and sink,*] *within their individual apartments, may have the option of obtaining meals from the facility or from another source* [.]

[~~as long as the~~ *1. The*] *facility* [~~has~~ *must have*] *an acceptable health monitoring plan for these residents and provides meals both for other residents and for residents identified as no longer capable of maintaining independent living status.*

[*2. An acceptable health monitoring plan includes: assurance of adequate resources, accessibility to food, capability to prepare food, availability of meals when the resident is sick or temporarily unable to prepare meals for himself.*]

§ 4.48. Bedtime snacks shall be made available and shall be listed on the daily menu. Vending machines shall not be used as the only source for bedtime snacks.

§ 4.49. Menus for meals and snacks.

A. Food preferences of residents shall be considered

when menus are planned.

B. Menus for meals and snacks shall be planned for at least two weeks in advance. At all times the menu for the following week shall be available.

C. Menus for the current week shall be dated and posted.

D. Any menu substitutions or additions shall be recorded.

E. A record shall be kept of the menus served for three months. They shall be subject to inspection by the department.

F. Minimum daily menu:

1. Unless otherwise ordered in writing by the attending physician, the daily menu, including snacks, for each resident shall provide, at least, the following:

Five-six ozs. of protein food (meat, poultry, fish, eggs, cheese, dry beans, etc.);

Two cups of milk or milk substitute (such as cheese, buttermilk, pudding, yogurt, etc.);

Four servings (1/2 to 3/4 cup each) of fruits or vegetables; (one serving each day shall be a vitamin C source and a dark green or yellow vegetable shall be served at least three times each week).

Four or more servings of whole grain or enriched breads (one slice per serving), and/or cereals (1/2 to 3/4 cups per serving).

2. Other foods may be added.

3. Extra servings shall be provided, if requested.

4. At least one meal each day shall include a hot main dish.

§ 4.50. When a diet is prescribed for a resident by the attending physician, it shall be prepared and served according to the physician's orders.

§ 4.51. There shall be at least a seven day supply of staple foods on hand to meet individual daily dietary requirements of residents in case of emergencies.

§ 4.52. All meals shall be served in the dining area as designated by the facility. Under special circumstances, such as illness or incapacity, meals may be served in a resident's room, provided a sturdy table is used.

§ 4.53. Personnel shall be available to help any resident who may need assistance in reaching the dining room or when eating.

§ 4.54. Table coverings and napkins shall be clean at all times.

Article 6.
Resident Activities.

§ 4.55. There shall be ~~at least~~ [~~one or more~~ *at least 11 hours of*] scheduled ~~activity~~ *activities* available to the residents [*each week*] for no less than ~~one hour~~ [~~*two hours*~~ *one hour*] each day. ~~This activity~~ *Activities* shall be of a social, recreational, religious, or diversional nature. Community resourses may be used to provide ~~this activity~~ *activities* .

§ 4.56. Activities shall be planned for at least one week in advance.

§ 4.57. These activities shall be varied and shall be planned in consideration of the abilities, physical conditions, needs and interests of the residents.

§ 4.58. The week's schedule of activities shall be written and posted in advance in a conspicuous place. Residents shall be informed of the activities program.

§ 4.59. A record shall be kept of the activity schedules for the past three months. They shall be available for inspection by the department.

§ 4.60. Resident participation in activities.

A. Residents shall be encouraged but not forced to participate in the program of activities.

B. At his discretion, the resident shall be permitted to meet with and participate in activities provided by social, religious and community groups, unless restrictions are imposed by the resident's physician.

C. Any restrictions imposed by a physician shall be documented in the resident's record and such restrictions shall be based solely on reasons of medical necessity.

Article 7.
Visitation.

§ 4.61. Visiting in the home.

A. Daily visits to residents in the home shall be permitted.

B. If visiting hours are restricted, daily visiting hours shall be posted in a place conspicuous to the public.

§ 4.62. Visiting outside the home.

Residents shall not be prohibited from making reasonable visits away from the home except when there is a written order of the legal guardian to the contrary.

Article 8.

Mail.

§ 4.63. Incoming and outgoing mail shall not be censored.

§ 4.64. Incoming mail shall be delivered promptly.

§ 4.65. Mail shall not be opened by staff except upon request of the resident or written request of the legal guardian.

Article 9.
Transportation.

§ 4.66. The resident shall be assisted in making arrangements for transportation.

PART V.
RECORDS.

Article 1.
General Requirements.

§ 5.1. Any forms used for record keeping shall contain at a minimum the information specified in these standards and regulations. Model forms, which may be copied, will be supplied by the department upon request.

§ 5.2. If any form such as medical, information, etc., developed by the department is not used, the substitute form shall be approved by the department.

§ 5.3. ~~Records shall be kept in a locked area.~~ *All records which contain the information required by these standards for both residents and personnel shall be retained at the facility and kept in a locked area.*

§ 5.4. The licensee shall have the responsibility for assuring that all records are treated confidentially and that information shall be made available only when needed for care of the resident.

(EXCEPTION: All records shall be made available for inspection by the department's representative.)

Article 2.
Resident Records.

§ 5.5. When a resident is admitted to the home, a permanent individual record shall be established.

A. The record shall be kept current.

B. The complete record shall be retained until two years after the resident leaves the home.

§ 5.6. Personal and social data to be maintained in the record:

1. Name;

2. Address;

a. Address from which resident was received;

b. Last home address, if different and known;

3. Date of admission;

4. Social Security number;

5. Birthdate (If unknown, estimated age);

6. Birthplace, if known;

7. Marital status, if known;

8. Name, address and telephone number of legal guardian, committee, personal representative, or other person responsible;

9. Name, address and telephone number of next of kin, if known (two preferred);

10. Name, address and telephone number of personal physician, if known;

11. Name, address and telephone number of clerygman and place of worship, if applicable;

12. Name, address and telephone number of local welfare department and/or any other agency, if applicable (the name of caseworker, if known);

13. Previous occupation, if available;

14. Special interests and hobbies, if known;

15. Date of discharge from the home for adults and destination. In the event discharge was made under emergency conditions the name of the responsible party who was notified and the date of the notification.

§ 5.7. Health information to be maintained:

1. Prior to admission, the report of a physician examination, including screening for tuberculosis, shall be submitted to the home as required in § 3.3.

2. Form and content of the physical examination report by § 3.3.

a. The report shall contain the following information:

(1) The date of the physical examination;

(2) Any diagnoses or significant problems; and

(3) Any recommendations for care including medication, diet and therapy.

b. Each report shall include separate statements

that:

(1) The individual is free of tuberculosis in a communicable form, including the type(s) of tests used and the results;

(2) The individual does not need nursing ~~or convalescent~~ care (i.e., intermediate or skilled nursing care routinely provided in a facility subject to licensure by the ~~State~~ *Virginia* Department of Health);

(3) The individual is not bedfast;

(4) The person's needs can be met in a home for adults which is not a medical facility;

(5) The individual is considered to be independently mobile, potentially semi-mobile, or nonambulatory. (See Definitions, § 1.1)

(6) The individual is or is not capable of administering his own medicine.

(7) If the facility is licensed only for ambulatory residents the preadmission medical examination form shall contain a statement that:

(a) The prospective resident does not have a medical condition which would preclude making an attempt to make a three minute exit.

(b) Clarifies whether the prospective resident is independently mobile or semi-mobile as defined in these regulations.

c. Each report shall be signed by the licensed physician, the physician's designee, or an official of a local department of health.

d. When the individual is a post-hospitalized person, the report of physical examination shall include a summary of the individual's aftercare/follow-along service needs. (See § 3.12D and E)

3. Subsequent evaluation for tuberculosis.

Any resident who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms, within 30 days of exposure/development, shall receive an evaluation in accord with § 5.7.2.b.(1).

§ 5.8. When a resident moves to another care-giving facility, the administrator shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services to the resident. Original information pertaining to the resident shall be maintained by the home from which the resident was transferred/discharged. The home shall maintain a listing of all information shared with the receiving facility.

§ 5.9. Consent for release of information.

A. The resident or his legal guardian has the right to release information from the resident's record to person(s) or agencies outside the facility.

B. The licensee is responsible for making available to residents a form which residents may use to grant their written permission to release information to a person or agency outside the facility.

(NOTE: A model form, which may be copied, may be obtained from the department.)

§ 5.10. Only under the following circumstances is a facility permitted to release information from the resident's records and/or information regarding the resident's personal affairs without the written permission of the resident or his legal guardian:

1. When records have been properly subpoenaed;

2. When the resident is in need of emergency medical care and is unable or unwilling to grant permission to release information and/or his legal guardian is not available to grant permission;

3. As provided in § 5.8 of these regulations.

4. To representatives of the department.

5. As otherwise required by law.

§ 5.11. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnosed and/or evaluation, for the purpose of determining whether the resident's need may continue to be met in a home for adults. When requested, this report shall be provided and shall be in the form specified by the department.

§ 5.12. Copies of the written progress reports regarding post-hospitalized residents, required by § 3.12 F of these standards and regulations, shall be retained in the resident's records.

§ 5.13. Any physician's notes and progress reports in the possession of the home shall be retained in the resident's record.

§ 5.14. A statement signed by a physician shall be in the record of the resident who is remaining in the home after becoming bedfast or who is physically restrained for nonemergency situations as described in § 4.32 A. This statement shall be obtained as intervals of not more than 90 days and shall state that:

1. The resident is not in need of nursing or convalescent care; (The basis for this decision shall be recorded in terms of the diagnosis and prognosis.)

2. The resident's needs can be met in the facility; and

3. Continuing restraint in an emergency, is not necessary.

§ 5.15. A notation of the notification of any serious illness, accident or use of restraint shall be made in the record within 24 hours. (See §§ 4.31 and 4.32.A.8.a concerning notification of next of kin.)

Article 3.
Agreements.

§ 5.16. Copies of all agreements between the home and the resident or official acknowledgement of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided the resident and any responsible party.

§ 5.17. At the time of admission, these agreements/acknowledgements of notification shall include the following:

1. Financial arrangement for care.

The resident financial agreement shall specify the following understanding and agreements regarding financial arrangements for care and services:

a. The amount to be paid, including charges for specific services, the frequency of payment, and any rules relating to nonpayment;

b. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

c. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the home at the time of admission or at some future date, it shall be stipulated in the agreement.

2. Description of general services available to all residents.

3. Listing of specific charges for services to be made to the individual resident signing the agreement.

4. Requirements or rules to be imposed regarding resident conduct and signed acknowledgement that they have been reviewed by the resident/responsible party.

5. Acknowledgement that the resident has reviewed a copy of § 63.1-182.1 of the Code of Virginia, Rights and Responsibilities of Residents in Homes for Adults, and that the provisions of this statute have been explained to him.

6. Acknowledgement that the resident and/or his representative have reviewed and had explained to him the home's policies and procedures for implementing § 63.1-182.1 of the Code of Virginia, including the grievance policy (§ 4.7) and relocation policy.

§ 5.18. Section 63.1-182.1 of the Code of Virginia, Rights and Responsibilities of Residents in Homes for Adults shall be reviewed with all resident annually. ~~Written acknowledgment of such~~ *The initial* review shall be *acknowledged by signature of each resident. This acknowledgment shall be* placed in each resident's record *upon admission. Thereafter, the home is responsible for maintaining a written record indicating that all residents were informed of their rights on an annual basis.* [~~*The record must include the date and names of residents.*~~ *The written record must include the names of the residents present and the date the residents' rights were read.*]

§ 5.19. A new agreement shall be signed or the original agreement shall be updated and signed by the resident, the guardian, committee or personal representative and by the licensee or administrator when there are changes in financial arrangements, services or requirements governing the residents conduct. If the original agreement provides for specific changes in financial arrangements, services or requirements, this standard does not apply.

§ 5.20. The resident shall have the right to manage all of his financial affairs and funds, unless a committee or guardian has been appointed for the resident.

§ 5.21. Delegation of financial management responsiblity.

If the resident delegates the management of personal financial affairs to the home, the following Standards apply:

1. Such delegation shall be in writing, with all properties listed in detail. This shall include all monies, stocks, bonds, securities, personal property, real estate, and any other anticipated income. A copy of the delegation shall be placed in the resident's record and a copy shall be given to the resident or responsible party.

2. A quarterly accounting shall be made to the resident, with a copy being retained in the record.

3. Upon termination of care, an accounting of such funds and assets shall be made to the resident or responsible party.

§ 5.22. Resident accounts.

A. A statement or itemized receipt of the resident's account shall be provided to the resident monthly and a copy placed in his record.

EXCEPTION: See § 5.21 for situations where responsiblity for management of the resident's financial

affairs has been delegated to the home, which requires a quarterly accounting only.

B. The monthly statement or itemized receipt shall itemize any charges made and any payments received during the previous 30 days or during the previous calendar month and shall show the balance due or any credits for overpayments on the resident's account.

§ 5.23. Safeguarding resident funds.

[~~If any personal funds are held by the home for safekeeping on behalf of the resident, a written accounting of money received and disbursed, showing a current balance, shall be maintained.~~

~~A. Such *Residents'* funds and such *the* accounting *of the funds shall be made available to the resident and/or the responsible party upon request.*~~

~~B. Such *Residents'* funds shall be returned to the resident or the responsible party upon termination of care.~~]

[~~*C.*~~ *A.*] *Residents' funds shall be held separately from any other moneys of the home.*

[~~*D.*~~ *B.*] *Residents' funds shall not be borrowed, used as assets of the home, or used for purposes of personal interest by the licensee/operator or facility staff.*

[*C. If any personal funds are held by the home for safekeeping on behalf of the resident, a written accounting of money received and disbursed, showing current balance, shall be maintained.*

1. Residents' funds and the accounting of the funds shall be made available to the resident and/or the responsible party upon request.

2. Residents' funds shall be returned to the resident or the responsible party upon termination of care.]

§ 5.24. There shall be a written agreement between the home and any resident who performs staff duties (See § 2.12).

A. The agreement shall not be a condition for admission or continued residence.

B. The resident shall enter into such an agreement voluntarily.

C. The agreement shall specify duties, hours of work, and compensation.

Article 4.
Employee Records.

§ 5.25. A record shall be established for each staff member. It shall not be destroyed until two years after employment is terminated.

§ 5.26. Personal and social data to be recorded:

1. Name;

2. Birthdate;

3. Current address and telephone number;

4. Position and date employed;

5. Last previous employment;

6. For persons employed after November 9, 1975, copies of at least two references or notations of verbal references , *obtained prior to employment,* reflecting the the date of the reference, the source and the content;

7. Previous experience and/or training;

8. Social Security number;

9. Name and telephone number of person to contact in an emergency;

10. Notations of formal training received following employment;

11. Date and reason for termination of employment.

§ 5.27. Health information required by these standards shall be maintained at the facility for the license and/or administrator, each staff member, and each household member who comes in contact with residents or handles food.

A. Initial tuberculosis examination and report:

1. Within 30 days before or 30 days after employment or contact with residents, each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form.

(EXCEPTION: When a staff person terminates work at one licensed facility and begins working at another licensed facility with a gap in service of six months or less, the previous statement of tuberculosis screening may be transferred to the second facility.)

2. Each individual shall submit a statement that he is free of tuberculosis in a communicable form. This statement shall be maintained at the facility and shall include the following:

a. The type(s) of test(s) used and the test result(s);

b. The date of the statement; and

c. The signature of the licensed physician, the

physician's designee, or an official of a local health department.

B. Subsequent evaluations.

Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory/symptoms shall, within 30 days of exposure/development, receive an evaluation in accord with § 5.27.A.

§ 5.28. At the request of the administrator of the facility or the Department of Social Services, a report of examination by a licensed physician shall be obtained when there are indications that the safety of residents in care may be jeopardized by the physical or mental health of a specified individual.

§ 5.29. Any individual who, upon examination or as a result of tests, shows indication of a physical or mental condition which may jeopardize the safety of residents in care or which would prevent performance of duties:

(a) Shall be removed immediately from contact with residents and food served to residents; and

(b) Shall not be allowed contact with resident or food served to residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

[~~§ 5.30. The facility shall maintain public liability insurance for bodily injury with a minimum limit of at least $500,000 each occurrence/$500,000 aggregate. Evidence of insurance coverage shall be made available to the department's representative upon request.~~

~~(NOTE: Language of specific policies may vary provided that the minimum amount of coverage is met.)~~]

PART VI.
BUILDING AND GROUNDS.

Article 1.
Buildings.

§ 6.1. Buildings subject to state and/or local building code shall meet these codes. A Certificate of Occupancy shall be obtained as evidence of compliance with the applicable code(s).

§ 6.2. Before construction begins or contracts are awarded for any new construction, remodeling, or alterations, plans shall be submitted to the department, to the local building official, to the local health department and/or to the Office of the State Fire Marshal, and/or local fire department where applicable, for review and recommendations.

§ 6.3. No mobile home shall be used as a home for adults or as a part of a home for adults.

§ 6.4. Buildings shall present no safety hazards.

§ 6.5. All rooms shall be well ventilated.

§ 6.6. Doors.

A. All doors shall open and close readily and effectively.

B. Any doorway that is used for ventilation shall be effectively screened.

C. Screen doors shall open outward.

§ 6.7. Any window that is used for ventilation shall be effectively screened and shall open and close readily.

§ 6.8. Rooms extending below ground level shall not be used for residents unless they are dry and well ventilated. Bedrooms below ground level shall have required window space and ceiling height.

§ 6.9. Heat.

A. Heat shall be supplied from a central heating plant or by an approved electrical heating system.

B. Provided their installation or operation has been approved by the state or local fire authorities, space heaters, such as but not limited to, wood burning stoves, coal burning stoves, and oil heaters, and/or portable heating units either vented or unvented, may be used only to provide or supplement heat in the event of a power failure or similar emergency.

C. When outside temperatures are below 65°F a temperature of at least 72°F shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours, when residents are asleep, a temperature of at least 68°F shall be maintained. This standard applies unless otherwise mandated by federal or state authorities.

§ 6.10. There shall be hot and cold running water from an approved source.

§ 6.11. Cooling devices (fan or air conditioners).

A. Cooling devices shall be made available in those areas of buildings used by residents when inside temperatures exceed 85°F.

B. Any electric fans shall be screened and placed for the protection of the residents.

C. Cooling devices shall be placed to minimize drafts.

§ 6.12. Lighting.

A. Artificial lighting shall be by electricity.

B. All areas shall be well lighted for *the* safety *and comfort of the residents according to the nature of activities* .

C. Night lights shall be provided in halls.

D. ~~The following footcandles of light as registered on a light meter shall be provided for general illuminations in the areas specified:~~

~~1. Sitting area 30;~~
~~2. Bathrooms 30;~~
~~3. Dining area 30;~~
~~4. Stairways 30;~~
~~5. Resident's rooms 30;~~
~~6. Halls 20;~~
~~7. Reading areas 30.~~

Hallways, stairwells, foyers, doorways, and exits utilized by residents shall be kept well lighted at all times residents are present in the building(s).

E. ~~Areas used for crafts or handwork shall be illuminated by 100 footcandles of light as measured by a light meter.~~ *Additional lighting, as necessary to provide and ensure presence of contrast, shall be available for immediate use in areas that may present safety hazards, such as but not limited to stairways, doorways, passageways, changes in floor level, kitchen, bathrooms and basements.*

F. Glare shall be kept at a minimum in rooms used by residents.

1. When necessary to reduce glare, windows shall be equipped with shades, curtains or other coverings.

2. All lights, including fluorescent lights, shall be covered with shades or protective fixtures or specially equipped to reduce glare and ensure protection.

G. If used, flourescent lights shall be replaced if they flicker or make noise.

H. All sources of light including windows, light fixtures, bulbs, etc., shall be kept clean.

~~F.~~ *I.* Emergency lighting.

1. Flashlights or battery lanterns shall be available at all times, with one light for each employee directly responsible for resident care who is on duty between 6 p.m. and 6 a.m.

2. There shall be one operable flashlight or battery lantern available for each bedroom used by residents and for the living and dining area unless there is a provision for emergency lighting in the adjoining hallways.

3. In homes not subject to the Uniform Statewide Building Code, but where there are 25 or more residents housed under one roof, there shall be provisions for emergency lighting or corridors and stairways leading to required exits by an independent standby system consistent with the Uniform Statewide Building Code.

4. Open flame lighting is prohibited.

~~G.~~ *J.* Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

§ 6.13. Each room shall have walls, ceiling, and floors or carpeting that may be cleaned satisfactorily.

§ 6.14. All inside and outside steps, stairways and ramps shall have nonslip surfaces.

§ 6.15. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

§ 6.16. Safeguards that are acceptable under existing fire and building codes shall be provided in hazardous areas that may include, but shall not be limited to, windows, doors, porches and changes in floor level.

§ 6.17. Elevators, where used, shall be kept in good running condition and shall be inspected at least annually. The signed and dated certificate of inspection issued by the local housing authority, by the insurance company, or by the elevator company shall be evidence of such inspection.

§ 6.18. Housing for nonambulatory and semi-mobile residents.

A. In homes where nonambulatory residents are housed:

1. Ramp(s) shall be provided at ground level;

2. Doorways shall permit passage of wheelchairs, if used.

B. In homes not licensed for nonambulatory residents but where semi-mobile residents are housed:

1. Two first floor exits shall be at ground level or ramped.

2. Doorways in areas commonly used by semi-mobile residents shall permit passage of wheelchairs or walkers, if used.

§ 6.19. There shall be enclosed walkways between residents' rooms and dining and sitting areas which are adequately lighted, heated, and ventilated. This requirement shall not apply to existing buildings of homes that had licenses in effect on January 1, 1980, unless such buildings are remodeled after that date or there is a change of sponsorship of the licensed home.

§ 6.20. Sitting room - dining room - recreation area.

Space other than sleeping areas must be provided that the residents may use for sitting, for visiting with each other and/or with guests, for social and recreational activities, and for dining. These rooms may be used interchangeably.

§ 6.21. Sleeping areas.

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For not less than 80 square feet of floor area in bedrooms accommodating one resident;

3. For not less than 60 square feet of floor area per person in rooms accommodating two or more residents;

4. For ceilings at least 7 1/2 feet in height;

5. Window area:

a. There shall be at least eight square feet of window area *above ground level* in a room housing one person;

b. There shall be at least six square feet of window area *above ground level* per person in rooms occupied by two or more persons.

6. For occupancy by no more than four residents in a room:

(EXCEPTION: A home that had a valid license on January 1, 1980, permitting care of more than four residents in specific room(s), will be deemed to be in compliance with this standard; however, the home may not exceed the maximum number of four residents in any other room in the facility. This exception will not be applicable if the home is remodeled or if there is a change of sponsorship.)

7. For at least three feet of space between sides and ends of beds that are placed in the same room;

8. That no bedroom shall be used as a corridor to any other room;

9. That all beds shall be placed only in bedrooms;

10. That household members and staff shall not share bedrooms with residents.

§ 6.22. Toilet, handwashing and bathing facilities.

A. In determining the number of toilets, washbasins, bathtubs or showers required, the total number of persons residing on the premises shall be considered. Unless there are separate facilities for household members or live-in staff, they shall be counted in determining the required number of fixtures. In a home with a valid license on January 1, 1980, only residents shall be counted in making the determination unless such home is subsequently remodeled or there is a change of sponsorship.

1. On each floor where there are residents' bedrooms, there shall be [~~at least~~]:

a. *At least* one toilet for seven persons;

b. *At least* one washbasin for each seven persons;

c. *At least* one bathtub or shower for each 10 persons;

d. Toilets, washbasins and bathtubs or showers in separate rooms for men and women where more than seven persons live on a floor. [~~*Bathrooms designed for multiple occupancy shall be designated by sex.*~~ *Bathrooms equipped to accommodate more than one person at a time shall be designated by sex.*] *Sex designation of bathrooms shall remain constant during the course of a day.*

2. On floors used by residents where there are no residents' bedrooms there shall be:

a. At least one toilet;

b. At least one washbasin;

c. Toilets and washbasins in separate rooms for men and women in homes where there are 10 or more residents. [~~*Bathrooms designed for multiple occupancy shall be designated by sex.*~~ *Bathrooms equipped to accommodate more than one person at a time shall be designated by sex.*] *Sex designation of bathrooms shall remain constant during the course of a day.*

B. Bathrooms shall provide for visual privacy for such activities as bathing, toileting, and dressing.

C. There shall be ventilation to the outside in order to eliminate foul odors.

D. There shall be ample supply of hot and cold water. (Precautionary measures shall be taken to prevent scalding in basins, tubs and showers.)

E. The following sturdy safeguards shall be provided:

1. Handrails by bathtubs;

2. Grab bars by toilets;

3. Handrails and stools by stall showers.

(EXCEPTION: The use of ~~handrails, grab bars and~~ [*shower*] stools shall be optional ~~in facilities used for independent living~~ *for individuals with independent living status* .)

Article 2.
Grounds.

§ 6.23. Grounds shall be free of hazards.

§ 6.24. Grounds shall be readily accessible in all seasons from the home and from the roadway.

§ 6.25. Grounds shall be properly maintained, to include freedom from trash and litter, mowing of grass, removal of snow and ice, etc.

PART VII.
FURNISHINGS, EQUIPMENT AND SUPPLIES.

Article 1.
Telephone.

§ 7.1. Each building shall have at least one operable, nonpay telephone easily accessible to staff. There shall be additional telephones or extensions as may be needed to summon help in an emergency.

§ 7.2. The resident shall have reasonable access to a telephone on the premises.

§ 7.3. Privacy shall be provided for residents to use a telephone.

Article 2.
Signaling Devices.

§ 7.4. All homes for adults shall have a signaling device that is audible or visible at the staff station and is easily accessible to the resident in his bedroom or in a connecting bathroom.

§ 7.5. In homes licensed to care for 20 or more residents under one roof:

A. The signaling device shall be one which terminates at the staff station and permits staff to determine the origin of the signal.

or

B. If the device does not terminate at the staff station so as to permit staff to determine the origin of the signal, staff shall make rounds at intervals of at least once an hour as specified in § 2.9.E.1.

Article 3.
First Aid and Emergency Supplies.

§ 7.6. First aid emergency supplies shall be on hand. These supplies shall include but shall not be limited to scissors, tweezers, gauze and adhesive tape. These supplies shall be located in a designated place within the home.

§ 7.7. In those homes where ambulance service is not available within 15 minutes there shall be a complete first aid kit, containing those items specified in the Standard First Aid and Personal Safety Manual that is available from all chapters of the American Red Cross. (See § 2.9 F)

Article 4.
Living and Sleeping Areas.

§ 7.8. Sitting rooms and/or recreation areas shall be equipped with:

1. Comfortable chairs (e.g. overstuffed, straight-backed, and rockers);

2. Tables;

3. Lamps;

4. Television (if not available in other areas of the facility);

5. Radio (if not available in other areas of the facility);

6. Current newpaper and magazines;

7. Books;

8. Games;

9. Materials appropriate for the implementation of the planned activity program.

§ 7.9. Dining areas shall have a sufficient number of sturdy dining tables and chairs to serve all residents, either all at one time or in shifts.

§ 7.10. Bedrooms shall contain the following items:

1. A separate bed with comfortable mattress, springs and pillow for each resident;

(EXCEPTION: Provisions for a double bed for a married couple shall be optional.)

2. A table or its equivalent accessible to each bed;

3. An operable bed lamp or bedside light accessible to each resident;

4. A chair for each resident;

5. Drawer space for clothing and other personal items. If more than one resident occupies a room, ample drawer space shall be assigned to each individual;

6. At least one mirror.

§ 7.11. Adequate and accessible closet or wardrobe space shall be provided for each resident.

§ 7.12. Prior to or at the time of admission, the resident and/or his representative shall be informed of the home's policy regarding bringing resident possessions into the home.

§ 7.13. The resident shall be encouraged to furnish or decorate his room as space and safety considerations permit and in accordance with these standards and regulations.

§ 7.14. The home shall have sufficient bed and bath linens in good repair so that residents always have clean

1. Sheets;

2. Pillowcases;

3. Blankets;

4. Bedspreads;

5. Towels;

6. Washcloths;

7. Waterproof mattress covers when needed.

§ 7.15. The home shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode.

§ 7.16. At least one moveable thermometer shall be available in each building for measuring temperatures in individuals rooms that do not have a fixed thermostat which shows the temperature in the room.

§ 7.17. Where there is an outdoor area accessible to residents, such as a porch or lawn, it shall be equipped with furniture in season.

§ 7.18. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 7.19. When any portion of a home for adults is subject to inspection by the State Health Department, the home shall be in compliance with those regulations. as evidenced by a report from the State Health Department.

PART VIII.
HOUSEKEEPING AND MAINTENANCE.

§ 8.1. The interior and exterior of all buildings shall be maintained in good repair.

§ 8.2. The interior and exterior of all buildings shall be kept clean and shall be free of rubbish.

§ 8.3. All buildings shall be well ventilated and free from foul, stale and musty odors.

§ 8.4. Adequate provisions for the collection and legal disposal of garbage, ashes and waste material shall be made.

A. Covered, vermin-proof, watertight containers shall be used.

B. Containers shall be emptied and cleaned at least once a week.

§ 8.5. Buildings shall be kept free of flies, roaches, rats and other vermin. The grounds shall be kept free of their breeding places.

§ 8.6. All sewage shall be disposed of in a public sewer system or in an approved sewage disposal system which meets state and/or local health requirements.

§ 8.7. All furnishings and equipment, including plumbing fixtures, shall be kept clean and in good repair.

§ 8.8. Bed and bath linens shall be changed at least every seven days and more often if needed.

§ 8.9. Laundering.

A. Table and kitchen linens shall be laundered seperately from other washable goods.

B. A sanitizing agent shall be used when bed, bath, table and kitchen linens are washed.

PART IX.
FIRE AND EMERGENCY PROTECTION.

§ 9.1. Virginia Public Building Safety Code and Uniform Statewide Building Code.

A. When any building of a home for adults is subject to inspection by the Office of the State Fire Marshal, it shall meet the requirements of the Virginia Public Building Safety Code.

B. When any building of a home for adults is subject to inspection by building officials, it shall meet the requirements of the Uniform Statewide Building Code.

§ 9.2. A home for adults shall comply with any local fire ordinance.

§ 9.3. A home for adults shall be free from fire hazards and shall provide adequate protection as determined by at least an annual inspection by the local fire department, a volunteer fire department, or a fire authority recognized by the department. The report of the inspection shall be made on a form provided by the department.

§ 9.4. Emergency plans.

A. A detailed emergency plan shall be prepared for each home for adults. The plan shall consist of the following:

1. Written procedures to be followed in the event of a fire or similar emergency. The local fire department or fire prevention bureau shall be consulted in preparing such a plan, if possible;

2. A drawing of each floor of each building, showing alternative exits for use in an emergency, location of telephones, fire alarm boxes and fire extinguishers, if any.

3. Written procedures to meet other emergencies, including severe weather, loss of utilities, missing persons, severe injury.

B. The emergency fire plan required by this standard shall be prominently displayed on each floor of each building used by residents.

C. The telephone number for the fire department, rescue squad or ambulance, and police shall be posted by each telephone shown on the emergency/fire plan.

(NOTE: In homes for adults where all outgoing telephones calls must be placed through a central switchboard located on the premises, this information may be posted by the switchboard rather than by each telephone, providing this switchboard is manned 24 hours each day.)

D. The licensee and/or administrator and all staff members shall be fully informed of the fire plan for the home, including their duties, and the location and operation of fire extinguishers and fire alarm boxes, if available. They shall know the telephone procedure for calling the fire department.

E. The emergency plan required by § 9.4 A of these standards and regulations shall be discussed at orientation for new staff, for new residents, and for volunteers.

§ 9.5. Fire drills.

A. At least one fire drill shall be held each month for the staff on duty and those residents able to participate. During a three-month period:

1. At least one fire drill shall be held between the hours of 7 a.m. and 3 p.m.;

2. At least one fire drill shall be held between the hours of 3 p.m. and 11 p.m.;

3. At least one fire drill shall be held between the hours of 11 p.m. and 7 a.m.

B. Homes not licensed for nonambulatory residents shall require all residents to participate in all required drills.

C. Additional fire drills may be held at the discretion of the administrator, fire official, or licensing specialist, and must be held in homes not licensed for nonambulatory residents *but which house semi-mobile residents* when there is any reason to question whether all residents can evacuate the building within three minutes. (See also § 3.15.1.f)

D. The required drills (§§ 3.9.C.2, 9.5.A.1-3 and 9.5.C) shall be planned and each required drill shall be unannounced.

E. The fire plan shall be reviewed quarterly with all staff and with all residents.

F. Immediately following each required fire drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the fire plan.

G. A record of required fire drills shall be kept in the home for one year. Such record shall include the date, the hour, the number of staff participating, the number of residents; and the time required to evacuate the building if such evacuation is required by the emergency plan.

H. In homes not licensed for nonambulatory residents, [*but which admit/retain semi-mobile residents,*] all residents must evacuate the building or meet the requirements of the approved fire plan within three minutes on each drill required by §§ 3.9.C.2, 9.5.A.1-3 and 9.5.C.

I. In homes not licensed for nonambulatory residents, [*but which admit/retain semi-mobile residents,*] if the building is not evacuated or the requirements of the approved fire plan met within three minutes, the administrator/licensee shall attach to the fire drill report the following:

1. Names of residents unable to evacuate the building within three minutes and reasons therefor.

2. Facility's plan for rapidly reestablishing ability to evacuate the building within three minutes. The plan must include the discharge of all residents who are unable to exit the building within three minutes or who impede others' exit. (See § 5.15.1.f)

J. In homes not licensed for nonambulatory residents *but which house semi-mobile residents* , all fire drills shall be timed with an instrument which indicates seconds; the three minute timed interval begins when the first signal is given.

K. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;

2. Practice in building evacuation procedures;

3. Practice in alerting fire fighting authorities;

4. Simulated use of fire fighting equipment;

5. Practice in fire containment procedures; and

6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 9.6. Housing of semi-mobile and nonambulatory residents.

A. In building or portions of building subject to Virginia Fire Safety Regulations, all residents must be independently mobile if occupancy is restricted to ambulatory persons under the Virginia Public Building Safety Code unless the licensed capacity of the building is 20 or fewer and all regulations regarding housing of semi-mobile residents are met.

B. In buildings subject to the Uniform Statewide Building Code, all residents must be independently mobile unless the building or portions of the building have been approved in the I-2 Classification or unless the licensed capacity of the building is 20 or fewer and all regulations regarding housing of semi-mobile residents are met.

PART X.
ADDITIONAL REQUIREMENT WITH RESPECT TO PUBLIC HOMES.

§ 10.1. If the home is operated by a political subdivision of the state or by two or more such subdivisions, copies of applicable ordinances and operating policies shall be filed with the department.

* * * * * * * * *

Title of Regulation: **VR 615-29-02. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.**

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179, 63.1-196 and 63.1-217 of the Code of Virginia.

Effective Date: July 1, 1989

Summary:

Under the current definitions and exceptions in the Code of Virginia, the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for the licensure, certification, or approval of public and private residential facilities providing care or treatment to children.

The regulation establishes the minimum requirements necessary to protect children in care of residential facilities for children and assure that children receive at least a minimal level of care. The revision amends and clarifies the requirements governing management of children's behavior in §§ 1.1 and 5.94 of the Core Standards. The revision is designed to more clearly articulate the requirements governing behavior management. In addition, the revision amends and clarifies the definition of "Residential Facility for Children" in § 1.1; the definition stipulates which facilities are subject to regulation under the Core Standards.

Subsequent to publication in proposed form, and in response to public comment, language was added to § 5.94 concerning the rights of access to clients provided by statute to advocates employed by the Department for Rights of the Disabled and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

VR 615-29-02. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

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PART I.
INTRODUCTION.

Article 1.
Definitions.

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

"Allegation" means an accusation that a facility is operating without a license ~~and/~~ or receiving public funds *, or both,* for services it is not certified to provide.

"Applicant" means the person, corporation, partnership, association or public agency which has applied for a license/certificate.

"Approval" means the process of recognizing that a public facility or an out-of-state facility has complied with standards for licensure or certification. (In this document the words "license" or "licensure" will include approval of public and out-of-state facilities except when describing enforcement and other negative sanctions which are described separately for these facilities.)

"Aversive stimuli" means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substances (e.g. hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

"Behavior management" means planned *, individualized* and systematic use of various techniques selected according to group and individual differences of the children and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior, and to reduce or to eliminate undesirable behavior. (The term is consistently generic [~~,~~ *and is*] not confined to those technicalities which derive specifically from behavior therapy, operant conditioning, etc.)

"Case record" or *"Record"* means written information assembled in one folder or binder relating to one individual. This information includes social and medical data, agreements, notations of ongoing information, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Certificate to operate" means documentation of licensure or permission granted by the Department of Education to operate a school for the handicapped that is conveyed on a single license/certificate.

"Certification" means the process of recognizing that a facility has complied with those standards required for it to receive funding from one of the four departments for the provision of residential program services to children. (Under the Code of Virginia, the Board of Corrections is given authority to "approve" certain public and private facilities for the placement of juveniles. Similarly, school boards are authorized to pay, under certain conditions, for special education and related services in nonsectarian private residential schools for the handicapped that are "approved" by the Board of Education. Therefore, in this context the word "approval" is synonymous with the word "certification" and will be termed certification for purposes of this process.)

"Child" means any person legally defined as a child under state law.

"Child placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.

"Child with special needs" means a child in need of particular services because he is mentally retarded, developmentally disabled, mentally ill, emotionally disturbed, a substance abuser, in need of special educational services for the handicapped, or requires security services.

"Client" means a person receiving treatment or other services from a program, facility, institution or other entity licensed/certified under these regulations whether that person is referred to as a patient, resident, student, consumer, recipient, or another term.

"Complaint" means an accusation against a licensed/certified facility regarding an alleged violation of standards or law.

"Confinement procedure" means a disciplinary technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to his bedroom or other normally furnished room. The room in which the child is confined shall not be locked nor the door secured in any manner that will prohibit the child from opening it. See also the definitions of "Timeout Procedure," "Seclusion," "Behavior Management," "Discipline" and other standards related to Behavior Management.

"Coordinator" means the person designated by the Coordinating Committee to provide coordination and monitoring of the interdepartmental licensure/certification process.

"Core standards" means those standards for residential care which are common to all four departments and which shall be met by all subject residential facilities for children in order to qualify for licensure, certification or approval.

"Corporal punishment" means ~~any type of physical punishment inflicted in any manner upon the body~~ *the*

inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort .

"Day off" means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive day off immediately following the first shall consist of not less than 24 additional consecutive hours.

"Department of Corrections standards for youth facilities" means those additional standards which must be met in order for a facility to receive funding from the Department of Corrections for the provision of residential treatment services as a juvenile detention facility, a facility providing youth institutional services, a community group home or other residential facility serving children in the custody or subject to the jurisdiction of a juvenile court or of the Department of Corrections except that Core Standards will be the Department of Corrections Standards for Youth Facilities for residential facilities receiving public funds pursuant to §§ 16.1-286 or 53.1-239 of the Code of Virginia for the provision of residential care to children in the custody of or subject to the jurisdiction of a juvenile court or of the Department of Corrections.

"Discipline" means systematic teaching and training that is designed to correct, mold, or perfect behavior according to a rule or system of rules governing conduct. The object of discipline is to encourage self-direction and self-control through teaching the ~~child~~ *client* to accept information, beliefs and attitudes which underlie the required conduct or behavior. The methods of discipline include, besides such instruction, positive reinforcement for *exhibiting* desirable behavior, as well as reasonable and age-appropriate consequences for *exhibiting* undesirable behavior, provided that these consequences are applied in a consistent and fair manner that gives the ~~child~~ *client* an opportunity to explain his view of the misbehavior and to learn from the experience. (See also, "Behavior Management" ~~and "Punishment."~~)

"Education standards" means those additional standards which shall be met in order for a facility to (i) receive a certificate to operate an educational program that constitutes a private school for the handicapped; or (ii) be approved to receive public funding for the provision of special education and related services to eligible children.

"Group home" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 children.

"Group residence" means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves from 13 to 24 children.

"Human research" means any medical or psychological investigation designed to develop or contribute to general knowledge and which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects, and which departs from the application of those established and accepted methods appropriate to meet the subjects' needs but does not include:

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from human subject in the course of standard medical practice;

2. Epidemiological investigations; or

3. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of each child. It specifies short and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. The term shall not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia, or psychotropic medications which are used for purposes other than intrusive aversive therapy.

"Licensee" means the person, corporation, partnership, association or public agency to whom a license is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.

"Licensing/certification authority" means the department ~~and/~~ or state board that is responsible under the Code of Virginia for the licensure, certification, or approval of a particular residential facility for children.

"Licensure" means the process of granting legal permission to operate a residential facility for children and to deliver program services. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the handicapped. Therefore, in this context, the term

"certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

"Living unit" means the space in which a particular group of children in care of a residential facility reside. Such space contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the children who reside in the unit. Depending upon its design, a building may contain only one living unit or several separate living units.

"Mechanical restraint" means the application of machinery or tools as a means of physically restraining or controlling a resident's behavior, such as handcuffs, straitjackets, shackles but not including bed straps, bed rails, slings and other devices employed to support ~~and/~~ or protect physically incapacitated children.

"Mental disabilities certification standards" means those standards in addition to Core Standards which shall be met in order for a facility to receive funding from the Department of Mental Health , ~~and~~ Mental Retardation *and Substance Abuse Services* for the provision of residential treatment services to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled and/or substance abusing children.

"Mental disabilities licensure standards" means, for those facilities that do not receive funding from the Department of Mental Health , ~~and~~ Mental Retardation *and Substance Abuse Services* , those standards in addition to Core Standards which must be met in order for a facility to be licensed to provide care or treatment to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled ~~and/~~ or substance abusing children.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a parent, guardian, or an individual acting as a parent in the absence of a parental guardian. The parent means either parent unless the facility has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary. The term "parent" may include the natural mother or father, the adoptive mother or father, or the legally appointed guardian or committee who has custody of the child. The term "parent" also includes a surrogate parent appointed pursuant to provisions set forth in § II D of the Department of Education's "Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia." A child 18 years or older may assert any rights under these regulations in his own name.

"Physical restraint" means any act by the facility or staff which exercises the use of physical confrontation ~~and/~~ or force with residents as a method or technique of managing harmful resident behavior.

"Placement" means an activity by any person which provides assistance to a parent or guardian in locating and effecting the movement of a child to a foster home, adoptive home or to a residential facility for children.

"Premises" means the tract(s) of land on which any part of a residential facility for children is located and any buildings on such tract(s) of land.

"Professional child and family service worker" means an individual providing social services to a child residing in a residential facility and his family. Such services are defined in Part V, Article 16.

"Program" means a combination of procedures and/or activities carried out in order to meet a specific goal or objective.

"Public funding" means funds paid by, on behalf of, or with the financial participation of the state Departments of Corrections; Education; Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services;* ~~and/~~ or Social Services.

~~*"Punishment"* means retributive, retaliatory and sometimes harsh or abusive reactions to children's misbehavior. Punishment is defined as a reaction that primarily relieves adult frustration without being rationally designed to teach or to correct children's behavior.~~

"Resident" means a person admitted to a residential facility for children for supervision, care, training or treatment on a 24-hour basis. For the purpose of these standards, the words, "resident," "child," "client" and "youth" are used interchangeably.

"Residential facility for children" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their parents; that is subject to licensure, certification or approval pursuant to the provisions of the Code of Virginia cited in the Legal Base; and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities and respite care facilities, except:

1. ~~Facilities which do not accept public funds and are required to be licensed as specified in §§ 63.1-195 through 63.1-219 of the Code of Virginia may be licensed under "Child Caring Institution Standards";~~ *Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and*

2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals . " ; ~~and~~

~~3. Residential facilities serving children which successfully meet the requirements of nationally recognized standards setting agencies whose standards and approval process are determined by the coordinating committee to be substantially equivalent to Core Standards and the interdepartmental process shall be considered as having met the requirements of the Interdepartmental Licensing/Certification process.~~

"Respite care facility" means a facility that is specifically approved to provide short term, periodic residential care to children accepted into its program in order to give the parents/guardians temporary relief from responsibility for their direct care.

"Responsible adult" means an adult, who may or may not be a staff member, who has been delegated authority to make decisions and to take actions necessary to assume responsibility for the safety and well-being of children assigned to his care. The term implies that the facility has reasonable grounds to believe that the responsible adult has sufficient knowledge, judgment and maturity commensurate to the demands of the situation for which he is assuming authority and responsibility.

"Right" is something to which one has a natural, legal or moral claim.

"Sanitize" means to wash or rinse with water containing a laundry bleach with an active ingredient of 5.25% sodium hypochlorite. The amount of bleach used may be in accordance with manufacturer's recommendation on the package.

"Seclusion" means placing a child in a room with the door secured in any manner that will prohibit the child from opening it.

"Secure custody facility" means a facility designed to provide, in addition to the appropriate treatment and/or service programs, secure environmental restrictions for children who must be detained and controlled on a 24-hour basis.

"Self-contained residential facility" means a residential setting for 13 or more children in which program activities are systematically planned and implemented as an integral part of the facility's staff functions (e.g., services are self-contained rather than provided primarily through through community resources). The type of program may vary in intensity according to the needs of the residents. Such settings include nonmedical as well as state-operated hospital based care.

"Severe weather" means extreme environment or climate conditions which pose a threat to the health, safety or welfare of residents.

"Shall" means an obligation to act is imposed.

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

"Single license/certificate" means a document which grants approval to operate a residential facility for children and which indicates the status of the facility with respect to compliance with applicable certification standards.

"Standard" means a statement which describes in measurable terms a required minimum performance level.

"Substantial compliance" means a demonstration by a facility of full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonably safe and adequate care, while approved plans of action to correct findings of noncompliance are being implemented.

"Team" means one or more representatives of the licensing certification authority(ies) designated to visit a residential facility for children to review its compliance with applicable standards.

"Temporary care facility" means a facility specifically approved to provide a range of services, as needed, on an individual basis for a period not to exceed 60 days except that this term does not include secure detention facilities.

"Timeout procedure" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to a special timeout room that is unfurnished or sparsely furnished and, which contains few reinforcing environmental stimuli. The timeout room shall not be locked nor the door secured in any manner that will prohibit the child from opening it. (See the definitions of "Confinement Procedure," "Seclusion," "Behavior Management," and "Discipline.")

"Treatment" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.

"Visually impaired child" means one whose vision, after best correction, limits his ability to profit from a normal or unmodified educational or daily living setting.

"Wilderness camp" means a facility which provides a primitive camping program with a nonpunitive environment and an experience curriculum for children nine years of age and older who cannot presently function in home, school and community. In lieu of or in addition to dormitories, cabins or barracks for housing children, primitive campsites are used to integrate learning and

therapy with real living needs and problems from which the child can develop a sense of social responsibility and self worth.

Article 2.
Legal Base.

§ 1.2. The Code of Virginia is the basis for the requirement that private residential facilities for children be licensed, certified and approved. It also authorizes the several departments to operate or reimburse certain public facilities. In addition, P. L. 94-63 and Title XX of the Social Security Act require the establishment of quality assurance systems.

§ 1.3. The State Board of Corrections ~~and/~~ or the Department of Corrections ~~are~~ { is } responsible for approval of facilities used for the placement of court-referred juveniles, as specified by § 16.1-286 and §§ 53.1-237 and 53.1-239 of the Code of Virginia, for promulgating a statewide plan for detention and other care facilities and for prescribing standards for such facilities pursuant to §§ 16.1-310 through 16.1-314 of the Code of Virginia; and for establishing and maintaining a system of community group homes or other residential care facilities pursuant to § 53.1-249 of the Code of Virginia.

§ 1.4. The State Board of Education is responsible for issuing certificates to operate (licenses) for residential schools for the handicapped in the Commonwealth of Virginia, as specified in Chapter 16 of of Title 22.1 (§§ 22.1-319 through 22.1-335) of the Code of Virginia. It is further responsible for the general supervision of the public school system for all school age residents of Virginia (for handicapped children, ages 2-21) and for approval of private nonsectarian education programs for the handicapped, as specified by § 22.1-218 of the Code of Virginia.

§ 1.5. The Department of Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* is responsible for licensure of facilities or institutions for the mentally ill, mentally retarded, and substance abusers within the Commonwealth of Virginia, as specified in Chapter 8 of Title 37.1 (§§ 37.1-179 through 37.1-189) of the Code of Virginia. It is also responsible for the certification of group homes as specified in § 37.1-199 of the Code of Virginia.

§ 1.6. The Department of Social Services is responsible for licensure of certain child welfare agencies and facilities in Virginia, as specified in Chapter 10 of Title 63.1 (§§ 63.1-195 through 63.1-219) of the Code of Virginia. It is also responsible for the certification of local welfare/social services department "agency operated" group homes, as specified in § 63.1-56.1 of the Code of Virginia.

Article 3.
Interdepartmental Agreement.

§ 1.7. An "Agreement for Interdepartmental Licensure and Certification of Children's Residential Facilities" was approved by the Director of the Department of Corrections; the Commissioners of the Department of Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* and the Department of Social Services ; and the Superintendent of Public Instruction and was initially signed on January 8-9, 1979. The agreement was updated effective September 30, 1984.

This agreement commits the above departments to apply the same standards to both public and private facilities and provides a framework for:

1. The joint development and application of licensure and certification standards;

2. A single coordinated licensure, certification and approval process that includes:

a. A single application for appropriate licensure, certification and/or approval;

b. A system for review of compliance with applicable standards;

c. A single license/certificate issued under the authority of the appropriate department(s) or board(s); and

d. Clear lines of responsibility for the enforcement of standards.

3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental licensure/certification program.

Article 4.
General Licensing/Certification Requirements.

§ 1.8. All residential facilities for children must demonstrate an acceptable level of compliance with Core Standards and other applicable licensure requirements (e.g. Mental Disabilities Licensure Standards) and shall submit a plan of corrective action acceptable to the licensing authority for remedying within a specified time any noncompliance in order to be licensed to operate or be certified to receive children in Virginia. Facilities also shall demonstrate an acceptable level of compliance with other applicable standards, such as Education Standards, Mental Disabilities Certification Standards and Department of Corrections Standards for Youth Facilities, and submit a plan of corrective action acceptable to the certification authority for remedying within a specified time any noncompliance in order to be certified or approved.

§ 1.9. Investigations of applications for licensure/certification will be carried out by representatives of the licensure/certification authority with each representative participating in the evaluation of compliance with applicable standards. The decision to license or certify will be based primarily on the findings

and recommendations of these representatives of the licensing/certification authority.

§ 1.10. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters.

Article 5.
The License/Certificate.

§ 1.11. The interdepartmental program will utilize a single licensure/certification process encompassing Core Standards and certification standards. A single document will be issued to each qualified facility which will, under appropriate statutory authority(ies), grant permission to operate a residential facility for children or certify approval for the placement of children using public funds and which will indicate the status of each facility with respect to compliance with applicable certification standards.

§ 1.12. The terms of any license/certificate issued shall include: (i) the operating name of the facility; (ii) the name of the individual, partnership, association or corporation or public agency to whom the license/certificate is issued; (iii) the physical location of the facility; (iv) the nature of the population; (v) the maximum number of persons to be accepted for care; (vi) the effective dates of the license; and (vii) other specifications prescribed within the context of the standards.

§ 1.13. The license/certificate is not transferable and automatically expires when there is a change of ownership, sponsorship, or location, or when there is a substantial change in services or clientele which would alter the evaluation findings and terms under which the facility was licensed/certified.

§ 1.14. Separate licenses/certificates are required for facilities maintained on separate pieces of property which do not have a common boundary, even though these may be operated under the same management and may share services and/or facilities.

§ 1.15. The current license/certificate shall be posted at all times in a place conspicuous to the public.

Article 6.
Types of Licenses/Certificates.

§ 1.16. An annual license/certificate may be issued to a residential facility for children that is subject to the licensure authority of the Departments of Education; Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* , or Social Services when its activities, services and requirements substantially meet the minimum standards and requirements set forth in Core Standards, applicable certification standards and any additional requirements that may be specified in relevant statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

§ 1.17. A provisional license/certificate may be issued whenever an applicant is temporarily unable to comply with all of the requirements set forth in Core Standards or applicable certification standards and under the condition that the requirements will be met within a specified period of time. A facility with provisional licensure/certification is required to demonstrate that it is progressing toward compliance. A provisional license/certificate shall not be issued where the noncompliance poses an immediate and direct danger to the health and safety of the residents.

A. For those facilities for which the Department of Mental Health ~~and~~ , Mental Retardation *and Substance Abuse Services* is the licensing authority as specified in Chapter 8 of Title 37.1 of the Code of Virginia , at the discretion of the licensing authority a provisional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. Such a provisional license may be renewed, but such provisional licensure and any renewals thereof shall not exceed a period of six successive months. A provisional license also may be issued to a facility which has previously been fully licensed when such facility is temporarily unable to comply with all licensing standards. However, pursuant to § 37.1-183.2 of the Code of Virginia, such a provisional license may be issued for any period not to exceed 90 days and shall not be renewed.

B. For those facilities for which the Department of Social Services is the licensing authority as specified in Chapter 10 of Title 63.1 of the Code of Virginia, a provisional license may be issued following the expiration of an annual license. Such provisional licensure and any renewals thereof shall not exceed a period of six successive months. At the discretion of the licensing authority, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements.

Such a conditional license may be renewed, but such conditional licensure and any renewals thereof shall not exceed a period of six successive months.

§ 1.18. An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i) the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of

compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.19. A residential facility for children operating under certification by the Department of Corrections may be issued a certificate indicating the status of the facility with respect to compliance with applicable certification standards. Such a certificate is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.20. The term of any certification(s) issued on an annual, provisional or extended license/certificate shall be coincident with the effective dates of the license.

§ 1.21. There shall be no fee to the licensee for licensure, certification or approval.

Article 7.
Preapplication Consultation Services.

§ 1.22. Upon receipt of an inquiry or a referral, preapplication consultation services will be made available by the Office of the Coordinator and the participating departments.

§ 1.23. Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;

2. To help the potential applicant explore the operational demands of a licensed/certified/approved residential facility for children;

3. To provide assistance in locating sources of information and technical assistance;

4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and

5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

Article 8.
The Initial Application.

§ 1.24. The application for a license to operate a residential facility for children shall be available from the Office of the Coordinator and the participating departments.

§ 1.25. All application forms and related information requests shall be designed to assure compliance with the provision of standards and relevant statutes.

§ 1.26. Completed applications along with other information required for licensure, certification or approval shall be submitted at least 60 days in advance of the planned opening date. Receipt shall be acknowledged.

Article 9.
The Investigation.

§ 1.27. Following receipt and evaluation of each completed application, a team will be organized made up of representatives from the departments which will be participating in the review of that particular facility.

§ 1.28. The team will arrange and conduct an on-site inspection of the proposed facility; a thorough review of the proposed services; and investigate the character, reputation, status, and responsibility of the applicant.

Article 10.
Allowable Variance.

§ 1.29. The licensing/certification authority has the sole authority to waive a standard either temporarily or permanently when in its opinion:

1. Enforcement will create an undue hardship;

2. The standard is not specifically required by statute or by the regulations of another government agency; and

3. Resident care would not be adversely affected.

§ 1.30. Any request for an allowable variance shall be submitted in writing to the licensing/certification authority.

§ 1.31. The denial of a request for a variance is appealable through the normal appeals process when it leads to the denial or revocation of licensure/certification.

Article 11.
Decision Regarding Licensure/Certification.

§ 1.32. Within 60 days of receipt of a properly completed application, the investigation will be completed and the applicant will be notified in writing of the decision regarding licensure/certification.

Article 12.
Issuance of a License, Certificate or Approval.

§ 1.33. Private facilities.

If licensure/certification (either annual, provisional or extended) is granted, the facility will be issued a

license/certificate with an accompanying letter citing any areas of noncompliance with standards. This letter will also include any specifications of the license and may contain recommendations.

§ 1.34. Public and out-of-state facilities.

If approval is granted, the facility will be issued a certificate of approval indicating that it has met standards required for it to operate and receive public funds.

Article 13.
Intent to Deny a License, Certificate or Approval.

§ 1.35. If denial of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

§ 1.36. Private facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) and sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the licensing/certification authorities to deny;

2. A list of noncompliances and circumstances leading to the denial; and

3. Notice of the facility's rights to a hearing.

§ 1.37. Locally-operated facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore, stating the reasons for the action, as well as the applicable state board or departmental sanctions or actions to which they are liable.

§ 1.38. State-operated public facilities.

The notification of intent to deny an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the Secretary stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.39. Out-of-state facilities.

The notification of denial of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

§ 1.40. The hearing.

An interdepartmental hearing will be arranged when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, § 9-6.14:1 et seq., of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

§ 1.41. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of denial, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

Article 14.
Renewal of License/Certificate.

§ 1.42. Approximately 90 days prior to the expiration of a license/certificate, the licensee will receive notice of expiration and an application for renewal of the license/certificate. The materials to be submitted will be indicated on the application.

In order to renew a license/certificate, the licensee shall complete the renewal application and return it and any required attachments. The licensee should submit this material within 30 days after receipt in order to allow at least 60 days to process the application prior to expiration of the license.

§ 1.43. The process for review of the facility and issuance or denial of the license/certificate will be the same as for an initial application (See Part I, Articles 8, 9, 12, 13).

Article 15.
Early Compliance.

§ 1.44. A provisional or conditional license/certificate may be replaced with an annual license/certificate when all of the following conditions exist:

1. The facility complies with all standards as listed on the face of the provisional or conditional license/certificate well in advance of its expiration date and the facility is in substantial compliance with all other standards;

2. Compliance has been verified by an on-site observation by a representative(s) of the licensing/certification authority or by written evidence

provided by the licensee; and

3. All other terms of the license/certificate remain the same.

§ 1.45. A request to replace a provisional license/certificate and to issue an annual license/certificate shall be made in writing by the licensee.

§ 1.46. If the request is approved, the effective date of the new annual license/certificate will be the same as the beginning date of the provisional license/certificate.

Article 16.
Situations Requiring a New Application.

§ 1.47. A new application shall be filed in the following circumstances:

1. Change of ownership and/or sponsorship;

2. Change of location; and/or

3. Substantial change in services provided and/or target population.

Article 17.
Modification of License/Certificate.

§ 1.48. The conditions of a license/certificate may be modified during the term of the license with respect to the number of children, the age range or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a license/certificate.

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days as to whether the modification is approved or a new license is required.

Article 18.
Visitation of Facilities.

§ 1.49. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

Article 19.
Investigation of Complaints and Allegations.

§ 1.50. The four departments are responsible for complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of children may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

Article 20.
Revocation of License/Certificate.

§ 1.51. Grounds for revocation.

The license, certificate or approval may be revoked when the licensee:

1. Violates any provision of the applicable licensing laws or any applicable standards made pursuant to such laws;

2. Permits, aids or abets the commission of any illegal act in such facility;

3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; or

4. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the licensing/certification authority and/or fails to correct such deviations within the time specified.

§ 1.52. Notification of intent to revoke.

If revocation of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

§ 1.53. Private facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the licensing/certification authorities to revoke;

2. A list of noncompliances and circumstances leading to the revocation; and

3. Notice of the facility's rights to a hearing.

§ 1.54. Locally-operated facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore stating the reasons for the action as well as the applicable state board or departmental sanctions or actions to which they are liable.

§ 1.55. State-operated public facilities.

The notification of intent to revoke an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the appropriate Secretary in the Governor's Cabinet, stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.56. Out-of-state facilities.

The notification of revocation of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

§ 1.57. The hearing.

An interdepartmental hearing will be arranged, when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, §9-6.14:1 et seq. of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

§ 1.58. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of revocation, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

§ 1.59. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the licensing/certification authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

§ 1.60. Appeals.

A. Following receipt of the final order transmitting the decision of the licensing/certification authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, §9-6.14:1 et seq. of the Code of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of Virginia.

PART II.
ORGANIZATION AND ADMINISTRATION.

Article 1.
Governing Body.

§ 2.1. The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

Article 2.
Responsibilities of the Licensee.

§ 2.3. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and

2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

Article 3.
Fiscal Accountability.

§ 2.8. The facility shall have a documented plan of

financing which gives evidence that there are sufficient funds to operate.

§ 2.9. A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and

2. A balance sheet showing assets and liabilities.

§ 2.11. Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. A copy of the facility's most recently completed financial audit;

2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and

3. A working budget showing projected revenue and expenses for the coming year.

§ 2.12. Facilities operated by state or local government agencies, boards and commissions that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and projected expenses for the coming year.

§ 2.13. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships that do not have a rate set in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;

2. A working budget showing projected revenue and expenses for the coming year;

3. A balance sheet showing assets and liabilities; and

4. A written assurance from the licensee that the documentation provided for in 1, 2, and 3 above presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. The facility shall provide additional evidence of financial responsibility as the licensing authority, at its discretion, may require.

Article 4.
Internal Operating Procedures.

§ 2.15. There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.16. There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

Article 5.
Insurance.

§ 2.18. A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. There shall be liability insurance on vehicles operated by the facility.

Article 6.
Bonding.

§ 2.20. Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

Article 7.
Fund-Raising.

§ 2.21. The facility shall not use children in its fund-raising activities without written permission of parent, guardian or agency holding custody.

Article 8.
Relationship to Licensing Authority.

§ 2.22. The facility shall submit or make available to the licensing authority such reports and information as the licensing authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. The governing body or its official representative shall notify the licensing authority(ies) within five working days of:

1. Any change in administrative structure or newly

hired chief administrative officer; and

2. Any pending changes in the program.

§ 2.24. In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;

2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and

3. Notify the licensing authority(ies) of the conditions at the facility and the status of the children in care as soon as possible.

Article 9.
Participation of Children in Research.

§ 2.25. The facility shall establish and implement written policies and procedures regarding the participation of children as subjects in research that are consistent with Chapter 13 of Title 37.1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of children as subjects of human research as defined by the above statute.

Article 10.
Children's Records.

§ 2.26. A separate case record on each child shall be maintained and shall include all correspondence relating to the care of that child.

§ 2.27. Each case record shall be kept up to date and in a uniform manner.

§ 2.28. Case records shall be maintained in such manner as to be accessible to staff for use in working with the child.

Article 11.
Confidentiality of Children's Records.

§ 2.29. The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the youth.

Article 12.
Storage of Confidential Records.

§ 2.31. Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. When not in use, records shall be kept in a locked compartment or in a locked room.

Article 13.
Disposition of Children's Records.

§ 2.34. Children's records shall be kept in their entirety for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. Permanent information shall be kept on each child even after the disposition of the child's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Child's name;

2. Date and place of child's birth;

3. Dates of admission and discharge;

4. Names and addresses of parents and siblings; and

5. Name and address of legal guardian.

§ 2.36. Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

Article 14.
Residential Facilities for Children Serving Persons Over the Age of 17 Years.

§ 2.37. Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of age, shall comply with the requirements of Core Standards for the care of all residents, regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the licensing/certification authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the children in care.

PART III.
PERSONNEL.

Article 1.
Health Information.

§ 3.1. Health information required by these standards shall

be maintained for the chief administrative officer, for all staff members who come in contact with children or handle food, and for any individual who resides in a building occupied by children including any such persons who are neither staff members nor children in care of the facility.

Article 2.
Initial Tuberculosis Examination and Report.

§ 3.2. Within 30 days of employment or contact with children each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

§ 3.3. Each individual shall submit a statement that he is free of tuberculosis in a communicable form including the type(s) of test(s) used and the test result(s).

§ 3.4. The statement shall be signed by licensed physician the physician's designee, or an official of a local health department.

§ 3.5. The statement shall be filed in the individual's record.

Article 3.
Subsequent Evaluations for Tuberculosis.

§ 3.6. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

Article 4.
Physical or Mental Health of Personnel.

§ 3.7. At the request of the licensee/administrator of the facility or the licensing authority a report of examination by a licensed physician shall be obtained when there are indications that the care of children may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of children in care or which would prevent the performance of duties:

1. Shall immediately be removed from contact with children and food served to children; and

2. Shall not be allowed contact with children or food served to children until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Article 5.
Qualifications.

§ 3.9. Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

§ 3.10. Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. When services or consultations are obtained on a contract basis they shall be provided by professionally qualified personnel.

Article 6.
Job Descriptions.

§ 3.12. For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;

2. The duties and responsibilities of the incumbent;

3. The job title of the immediate supervisor; and

4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

Article 7.
Written Personnel Policies and Procedures.

§ 3.14. The licensee shall approve written personnel policies.

§ 3.15. The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified in the job description for that staff position.

§ 3.17. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for discipline and behavior management of children;

2. Procedures for handling accusations against staff; and

3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during any investigation. (See § 5.143)

§ 3.18. Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

Article 8.
Personnel Records.

§ 3.19. A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:

a. Identifying information (name, address, phone number, social security number, and any names previously utilized);

b. Educational history; and

c. Employment history.

2. Written references or notations of oral references;

3. Reports of required health examinations;

4. Annual performance evaluations; and

5. Documentation of staff development activities.

§ 3.20. Each personnel record shall be retained in its entirety for two years after employment ceases.

§ 3.21. Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

Article 9.
Staff Development.

§ 3.22. New employees, relief staff, volunteers and students, within one calendar month of employment, shall be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. Regular supervision of staff shall be provided.

§ 3.25. Regular supervision of staff shall not be the only method of staff development.

§ 3.26. Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10.
Staff Supervision of Children.

§ 3.27. No person shall be scheduled to work more than six consecutive days between rest days.

§ 3.28. Child care staff who have at least one 24 consecutive hour period on duty during a week shall have an average of not less than two days off per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. Child care staff who do not have at least one 24-consecutive-hour period on duty during a week shall have an average of not less than two days off per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.30. Child care staff who do not have at least one 24-consecutive-hour period on duty during a week shall not be on duty more than 16 consecutive hours except in emergencies when relief staff are not available.

§ 3.31. There shall be at least one responsible adult on the premises and on duty at all times that one or more children are present.

§ 3.32. There shall be at least one child care staff member on duty in each living unit when one or more children are present.

§ 3.33. During the hours that children normally are awake there shall be no less than one child care staff awake, on duty and responsible for supervision of every 10 children present who are two years of age or older.

§ 3.34. During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty, and responsible for supervision of every three children present under two years of age.

§ 3.35. In buildings where 30 or more children are sleeping there shall be no less than one child care staff member awake and on duty during night hours.

§ 3.36. There shall be at least one child care staff member awake on each floor and on each major wing of each floor where 30 or more children are sleeping.

§ 3.37. When children are away from the facility they and the adults responsible for their care during that absence shall be furnished with telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

Article 11.
The Chief Administrative Officer.

§ 3.38. The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;

2. Implementation of all policies;

3. Maintenance of the physical plant; and

4. Fiscal management of the residential facility for children.

§ 3.39. Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

Article 12.
The Program Director.

§ 3.42. The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

§ 3.43. A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or

2. A graduate degree from an accredited college or university in a profession related to child care and development; or

3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. When a facility is licensed/certified to care for 13 or more children, a full-time, qualified staff member shall fulfill the duties of the program director.

Article 13.
Child and Family Service Worker(s).

§ 3.46. If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

§ 3.47. If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or

2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or

3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or

4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:

a. Social Work, or

b. Psychology, or

c. Counseling (individual, group or family).

Article 14.
Child Care Staff.

§ 3.48. In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. A designated staff member shall be responsible for the coordination of all services offered to each child.

§ 3.50. A designated staff member(s) shall have

responsibility for the orientation, training and supervision of child care workers.

§ 3.51. An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Discipline; and

4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. A child care worker shall be no less than 18 years of age.

§ 3.54. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and

2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

Article 15.
Relief Staff.

§ 3.55. Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and

2. Unscheduled absences of permanent staff.

Article 16.
Medical Staff.

§ 3.56. Services of a licensed physician shall be available for treatment of children as needed.

§ 3.57. Any nurse employed shall hold a current nursing license issued by the Commonwealth of Virginia.

§ 3.58. At all times that youth are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. At all times that youth are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulminary resuscitation issued by the American Red Cross or other recognized authority.

Article 17.
Recreation Staff.

§ 3.60. There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;

2. A variety of skills in group activities;

3. A knowledge of community recreational facilities; and

4. An ability to motivate children to participate in constructive activities.

Article 18.
Volunteers and Students Receiving Professional Training.

§ 3.61. If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. The facility shall not be dependent upon the use of volunteers/students to ensure provision of basic services.

§ 3.63. The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. All volunteers/students shall have qualifications appropriate to the services they render based on experience and/or orientation.

§ 3.66. Volunteers/students shall be subject to all regulations governing confidential treatment of personal information.

§ 3.67. Volunteers/students shall be informed regarding liability and protection.

Article 19.
Support Functions.

§ 3.68. Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. Child care workers and other staff may assume the duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. Children shall not be solely responsible for support functions.

PART IV.
RESIDENTIAL ENVIRONMENT.

Article 1.
Location.

§ 4.1. A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

Article 2.
Buildings, Inspections and Building Plans.

§ 4.2. All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by:

1. Local fire authorities with respect to fire safety and fire hazards, except in state operated facilities;

2. State fire officials, where applicable; and

3. State or local health authorities, whose inspection and approval shall include:

a. General sanitation;

b. The sewage disposal system;

c. The water supply;

d. Food service operations; and

e. Swimming pools.

§ 4.4. The buildings shall be suitable to house the programs and services provided.

Article 3.
Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing licensed buildings shall be submitted to and approved by the licensing/certification authority and the following authorities, where applicable, before construction begins:

1. Local building officials;

2. Local fire departments;

3. Local or state health departments; and

4. Office of the State Fire Marshal.

§ 4.6. Documentation of the approvals required by § 4.5 shall be submitted to the licensing authority(ies).

Article 4.
Heating Systems, Ventilation and Cooling Systems.

§ 4.7. Heat shall be evenly distributed in all rooms occupied by the children such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. Natural or mechanical ventilation to the outside shall be provided in all rooms used by children.

§ 4.9. All doors and windows capable of being used for ventilation shall be fully screened unless screening particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by children when the temperature in those rooms exceeds 85°F.

Article 5.
Lighting.

§ 4.11. Artificial lighting shall be by electricity.

§ 4.12. All areas within buildings shall be lighted for safety.

§ 4.13. Night lights shall be provided in halls and bathrooms.

§ 4.14. Lighting shall be sufficient for the activities being performed in a specific area.

§ 4.15. Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

Article 6.
Plumbing and Toilet Facilities.

§ 4.17. All plumbing shall be maintained in good operational condition.

§ 4.18. There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. There shall be at least one toilet, one hand basin and one shower or tub for every eight children in care.

§ 4.22. In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four children in care.

§ 4.23. When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. At all times an adequate supply of personal necessities shall be available to the children for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

§ 4.26. Clean, individual washclothes and towels shall be available once each week or more often if needed.

Article 7.

Facilities and Equipment for Residents with Special Toileting Needs.

§ 4.27. When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned with warm soapy water immediately after each use.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual resident or themselves with toileting.

Article 8.
Sleeping Areas.

§ 4.28. When children are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. No more than four children may share a bedroom or sleeping area.

§ 4.30. When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;

2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;

3. There shall be not less than 60 square feet of floor area per person in rooms accommodating two or more persons; and

4. All ceilings shall be at least 7-1/2 feet in height.

§ 4.33. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. Cribs shall be provided for children under two years of age.

§ 4.37. Each child shall be assigned drawer space and closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. Smoking by any person shall be prohibited in sleeping areas.

Article 9.
Privacy for Children.

§ 4.40. Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. Windows in bathrooms shall provide for privacy.

§ 4.43. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. Windows in sleeping and dressing areas shall provide for privacy.

Article 10.
Living Rooms/Indoor Recreation Space.

§ 4.45. Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. In facilities licensed to care for more than 12 children there shall be indoor recreational space that contains recreational equipment appropriate to the ages and interests of the children in residence. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

Article 11.
Study Space.

§ 4.47. Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

Article 12.
Kitchen and Dining Areas.

§ 4.49. Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate for the sizes and ages of the residents.

§ 4.50. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

Article 13.
Laundry Areas.

§ 4.52. If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

Article 14.
Storage.

§ 4.53. Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

Article 15.
Staff Quarters.

§ 4.54. A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more except, that when there are no more than four persons, including staff and family of staff, residing in and/or on duty in the living unit, a private bathroom is not required for staff.

§ 4.55. Off duty staff and members of their families shall not share bedrooms with children in care.

§ 4.56. When 13 or more children reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

Article 16.
Office Space.

§ 4.58. Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

Article 17.
Buildings and Grounds.

§ 4.59. Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. There shall be outdoor recreational space appropriately equipped for the children to be served.

Article 18.
Equipment and Furnishings.

§ 4.61. All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or

2. Kept under lock and key; or

3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

Article 19.
Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which children and staff come in contact.

Article 20.
Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

Article 21.
Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

Article 22.
Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on

hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

Article 23.
Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98 Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24-hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing.

§ 4.105. Solid wastes which are generated in primitive camps shall be disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

Article 24.
Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent flybreeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

Article 25.
Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

Article 26.
Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated for 0°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

Article 27.
Clothing in Primitive Campsites.

§ 4.130. Each child shall be provided with an adequate supply of clean clothing suitable for outdoor living appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each child.

§ 4.132. An adequate personal storage area shall be available for each resident.

Article 28.
Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacant to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other combustion at the primitive campsite.

PART V.
PROGRAMS AND SERVICES.

Article 1.
Criteria for Admission.

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;

2. A description of the types of services offered; and

3. Intake and admission procedures including necessary referral documentation.

§ 5.2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5.3. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

Article 2.
Admission of Blind or Visually Impaired Children.

§ 5.5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not previously obtained).

§ 5.6. Provision of the services of the Department for the Visually Handicapped shall be documented in the child's record.

§ 5.7. If the services of the Department for the Visually Handicapped are not obtained the child's placement shall be considered inappropriate.

Article 3.
Interstate Compact on the Placement of Children.

§ 5.8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5.9. Documentation of approval of the compact administrator shall be retained in the child's record.

Article 4.
Documented Study of the Child.

§ 5.10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to secure detention facilities.

§ 5.11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5.12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a routine admission or 30 days after an emergency admission each child's record shall contain all of the elements of the documented study.

§ 5.13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the child's record):

1. A formal request or written application for admission;

2. Identifying information documented on a face sheet (see § 5.14);

3. Physical examination as specified in § 5.59;

4. Medical history (see § 5.15);

5. A statement, such as a report card, concerning the child's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;

6. Results of any psychiatric or psychological evaluations of the child, if applicable;

7. Social and developmental summary (see § 5.16);

8. Reason for referral; and

9. Rationale for acceptance.

§ 5.14. Identifying information on a face sheet shall include:

1. Full name of resident;

2. Last known residence;

3. Birthdate;

4. Birthplace;

5. Sex of child;

6. Racial and national background;

7. Child's Social Security number;

8. Religious preference of child ~~and/~~ or parents;

9. Custody status indicating name and address of legal guardian, if any;

10. Names, addresses and telephone numbers for emergency contacts, parents, guardians or representative of the child-placing agency, as applicable; and

11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the child's parents and siblings, if known;

2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the child;

3. Psychological, psychiatric and neurological examinations, if applicable;

4. Name, address and telephone number of child's former physician(s), when information is available; and

5. Name, address and telephone number of child's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

1. Description of family structure and relationships;

2. Previous placement history;

3. Current behavioral functioning including strengths, talents, and problems;

4. Documentation of need for care apart from the family setting;

5. Names, address(es), Social Security numbers, and marital status of parents; and

6. Names, ages, and sex of siblings.

Article 5.
Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's admission by documenting the following:

1. A preplacement visit by the child accompanied by a family member, an agency representative or other responsible adult;

2. Preparation through sharing information with the child, the family and the placing agency about the facility, the staff, the children and activities; and

3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

Article 6.
Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or by written placement agreement with parents, legal guardians or other individuals or agencies having legal authority to make such an agreement except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

Article 7.
Written Placement Agreement.

§ 5.19. At the time of admission the child's record shall contain the written placement agreement from the individual or agency having custody ~~and/~~ or a copy of the court order *, or both,* authorizing the child's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the child's placement in the facility designating the name and physical location of the facility and the name of the child;

2. Recognize the rights of each of the parties involved in the placement clearly defining areas of joint responsibility in order to support positive placement goals;

3. Include financial responsibility, where applicable;

4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;

5. Address the matter of all absences from the facility and shall specify the requirements for notifying ~~and/~~ or obtaining approval of the party having legal responsibility for the child. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the child is required.

Article 8.
Emergency Admissions.

§ 5.21. Facilities other them temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and

2. Place in each child's record a written request for care or documentation of an oral request for care.

Article 9.
Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;

2. A court order or a written placement agreement (see § 5.18), if the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution;

3. Identifying information documented on a face sheet which shall include:

a. Full name of child,

b. Birthdate,

c. Sex of child,

d. Racial/ethnic background,

e. Last known address,

f. Names and addresses of persons or agencies to contact in case of emergency,

g. Date of admission, and

h. Child's social security number;

4. The child's health status including:

a. A statement of known ~~and/~~ or obvious illnesses and handicapping conditions;

b. A statement of medications currently being taken;

c. A statement of the child's general health status; and

d. Name, address and telephone number of the child's physician, if known; and

5. A statement describing the child's need for immediate temporary care.

§ 5.23. When identifying information is not available the reason shall be documented on the face sheet.

Article 10.

Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a child will be discharged when the child and his parents/guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

1. Criteria for a child's completion of the program as described for compliance with § 2.5; and

2. Conditions under which a child may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each child's record shall contain the following:

1. Documentation that the termination of care has been planned with the parent/guardian/child-placing agency and with the child; and

2. A written discharge plan and documentation that it was prepared and discussed with the child, when appropriate, prior to the child's discharge. The plan shall contain at least:

a. An assessment of the child's continuing needs; and

b. A recommended plan for services in the youth's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the child's record shall contain the following information:

1. Date of discharge;

2. Reason for discharge;

3. Documentation that the reason for discharge was discussed with the parent/guardian/child-placing agency and, when appropriate, with the child, except that this requirement does not apply to court ordered discharges;

4. Forwarding address of the child, if known;

5. Name and address of legally responsible party to whom discharge was made; and

6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the child's record no later than 30 days after

discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

1. Length of a child's residence at the time of discharge;

2. The name of the child's designated case coordinator, if assigned;

3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;

4. Summary of the child's overall progress during placement;

5. Summary of family contracts during placement, if any; and

6. Reasons for discharge.

§ 5.30. Except in secure detention, children shall be discharged only to the legally responsible party from whom they were accepted except (i) in cases where legal responsibility has been transferred to another person or agency during the period of the child's stay in the facility or (ii) in cases where a child committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

Article 11.
Placement of Children Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a child away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

Article 12.
Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each child, within 30 days of admission and placed in the child's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

§ 5.33. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan:

1. The child;

2. The child's family or legally authorized representative;

3. The placing agency; and

4. Facility staff.

§ 5.34. The degree of participation, or lack thereof, of each of the parties listed in § 5.33 in developing the service plan shall be documented in the child's record.

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following:

1. A statement of the resident's current level of functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;

2. A statement of goals and objectives meeting the above identified needs;

3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;

4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;

5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;

6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and

7. The estimated length of the resident's stay.

Article 13.
Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each child's record and shall include:

1. Reports of significant incidents, both positive and negative;

2. Reports of visits with the family;

3. Changes in the child's family situation;

4. Progress made toward the goals and objectives described in the Service Plan required by § 5.32;

5. School reports;

6. Discipline problems in the facility and the community;

7. Summary of the child's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;

8. Reevaluation of the placement including tentative discharge plans.

Article 14.
Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate, unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the child's current level of functioning and needs:

1. The resident;

2. The resident's family or legally authorized representative;

3. The placing agency; and

4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the child's record except that this section does not apply to secure detention facilities.

§ 5.39. Staff responsible for the daily implementation of the child's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual children except that this section does not apply to secure detention facilities.

§ 5.40. Staff responsible for daily implementation of the child's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities.

Article 15.
Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each child admitted to a temporary care facility and placed in the child's master file within 72 hours of admission.

§ 5.42. The individualized service plan shall include:

1. The child's description of his situation/problem;

2. Documentation of contact with the child's parent or guardian to obtain his description of the child's situation/problem;

3. The facility staff's assessment of the child's situation/problem;

4. A plan of action including:

a. Services to be provided,

b. Activities to be provided,

c. Who is to provide services and activities, and

d. When services and activities are to be provided;

5. The anticipated date of discharge, and

6. An assessment of the child's continuing need for services.

Article 16.
Counseling and Social Services.

§ 5.43. For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the child and the parents or guardian to understand the effects on the child of separation from the family and the effect of group living;

2. Assisting the child and the family in maintaining their relationships and planning for the future care of the child;

3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;

4. Helping the child with problems affecting the ability to have satisfying personal relationships and use of the capacity for growth;

5. Conferring with the child care staff to help them understand the child's needs in order to promote adjustment to group living; and

6. Working with the child and with the family or any placing agency that may be involved in planning for the child's future and in preparing the child for return home, for independent living, or for other residential care.

§ 5.44. The provision of counseling and social services shall be documented in each child's record except that this section does not apply to secure detention facilities.

§ 5.45. For all facilities, except secure detention facilities, counseling and/or other social services consistent with the goals of the Service Plan shall be provided to meet the specific needs of each child in one of the following ways:

1. By a qualified staff member;

2. By service staff of the agency that placed the child provided such staff is available on an as needed basis rather than on a limited basis (e.g. quarterly or semiannually);

3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or

4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community based group.

Article 17.
Residential Services.

§ 5.46. There shall be evidence of a structured program of care that is designed to:

1. Meet the child's physical needs;

2. Provide protection, guidance and supervision;

3. Promote a sense of security and self-worth; and

4. Meet the objectives of any required service plan.

§ 5.47. There shall be evidence of a structured daily routine that is designed to assure the delivery of program services.

§ 5.48. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by children including health and dental complaints or injuries.

§ 5.49. Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. Routines shall be planned to assure that each child shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the children.

Article 18.
Health Care Procedures.

§ 5.52. Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;

2. Routine ongoing and follow-up medical and dental services after admission; and

3. Emergency services for each child as provided by statute or by agreement with the child's parent(s) ~~and/~~ or legal guardian *, or both* .

§ 5.53. For all facilities except temporary care facilities written information concerning each child shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician ~~and/~~ or dentist *, or both,* to be notified;

2. Name, address, and telephone number of relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;

4. Information concerning:

a. Use of medication,

b. Medication allergies,

c. Any history of substance abuse except that this requirement does not apply to secure detention, and

d. significant medical problems; and

5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

§ 5.54. Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

Article 19.
Physical Examinations.

§ 5.55. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. Following the initial examination, each child shall have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or

2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. Each physical examination report shall be included in the child's record.

§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;

2. Visual acuity;

3. Auditory acuity;

4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

5. Allergies, chronic conditions, and handicaps, if any;

6. Nutritional requirements, including special diets, if any;

7. Restriction of physical activities, if any;

8. Recommendations for further treatment, immunizations, and other examinations indicated;

9. The date of the physical examination; and

10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.60. In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing other children in care and staff; and

2. The facility is aware of the required treatment for the child and procedures to protect other children in care and staff.

§ 5.61. Recommendations for follow-up medical observation and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. Except for (i) secure detention facilities, (ii) temporary care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and

2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each child.

§ 5.63. Each child's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

§ 5.64. Each child's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. Provision shall be made for suitable isolation of any child suspected of having a communicable disease.

§ 5.66. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

Article 20.
Medication.

§ 5.67. All medication shall be securely locked and properly labeled.

§ 5.68. Medication shall be delivered only by staff authorized by the director to do so.

§ 5.69. Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. A program of medication shall be instituted for a specific child only when prescribed in writing by a licensed physician.

§ 5.71. Medications that are classified as "controlled substances" as defined in [§ ~~54-524.2~~ *§ 54.1-3401*] of the Code of Virginia shall only be obtained from a licensed physician or from a licensed pharmacist upon individual prescription of a licensed physician.

§ 5.72. A daily log shall be maintained of all medicines received by the individual child.

§ 5.73. The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

Article 21.
Nutrition.

§ 5.76. Provisions shall be made for each child to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept on file for at least six months.

§ 5.80. The daily diet for children shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the children in care.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the child shall be observed.

§ 5.84. Staff who eat in the presence of the children shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the evening meal and breakfast the following day.

Article 22.
Discipline and Management of Resident Behavior.

§ 5.86. The facility shall have written disciplinary and behavior management policies, including written rules of conduct, appropriate to the age and developmental level of the children in care.

§ 5.87. Disciplinary and behavior management policies and rules of conduct shall be provided to children, families and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided within 72 hours after admission.

§ 5.88. There shall be written procedures for documenting and monitoring use of the disciplinary and behavior management policies.

§ 5.89. Control, discipline and behavior management shall be the responsibility of the staff.

Article 23.
Confinement Procedures.

§ 5.90. When a child is confined to his own room as a means of discipline, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.91. Any child confined to his own room shall be able to communicate with staff.

§ 5.92. There shall be a staff check on the room at least every 30 minutes.

§ 5.93. The use of confinement procedures shall be documented.

Article 24.
~~Prohibited Means of Punishment.~~ *Prohibitions.*

§ 5.94. The following ~~methods of punishment shall be~~ *actions are* prohibited:

1. Deprivation of ~~nutritionally balanced meals, snacks, and~~ drinking water *or food necessary to meet a client's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record* ;

2. ~~Prohibition~~ *Denial* of contacts and visits with ~~family, legal guardian,~~ attorney, probation officer, or placing agency representative;

3. Denial of contacts and visits with family or legal guardian except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

~~3.~~ *4.* ~~Limitation of receipt of mail;~~ *Delay or withholding of incoming or outgoing mail except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;*

~~4.~~ *5. Any action which is* humiliating ~~or~~ , degrading ~~practices including ridicule~~ , or ~~verbal abuse~~ *abusive* ;

~~5.~~ *6.* Corporal punishment ; ~~including any type of physical punishment inflicted upon the body~~ *except as permitted in a public school or a school maintained by the state pursuant to § 22.1-280 of the Code of Virginia* ;

~~6.~~ *7.* Subjection to ~~unclean and~~ unsanitary living conditions;

~~7.~~ *8.* Deprivation of opportunities for bathing ~~and~~ *or* access to toilet facilities ; ~~and~~ *except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;*

~~8.~~ *9.* Deprivation of health care including counseling;

10. Intrusive aversive therapy except as permitted by other applicable state regulations;

11. Application of aversive stimuli except as part of an intrusive aversive therapy plan approved pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record; [~~and~~]

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record [: *; and*]

[*14. Denial of contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and advocates employed by the Department for Rights of the Disabled to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.*]

Article 25.
Chemical or Mechanical Restraints.

§ 5.95. The use of mechanical ~~and/~~ or chemical restraints is prohibited unless use is specifically permitted by a special license or certification module.

Article 26.
Physical Restraint.

§ 5.96. A child may be physically restrained only when the child's uncontrolled behavior would result in harm to the child or others and when less restrictive interventions have failed.

§ 5.97. The use of physical restraint shall be only that which is minimally necessary to protect the child or others.

§ 5.98. If the use of physical restraint or the use of other measures permitted by a certification module is unsuccessful in calming and moderating the child's behavior the child's physician, the rescue squad, the police or other emergency resource shall be contacted for assistance.

§ 5.99. Any application of physical restraint shall be fully documented in the child's record as to date, time, staff involved, circumstances, reasons for use of physical restraint, and extent of physical restraint used.

Article 27.
Seclusion.

§ 5.100. Secluding a child in a room with the door secured in any manner that will prohibit the child from opening it shall be prohibited unless it is specifically permitted by a special license or certification module.

Article 28.
Timeout Procedures.

§ 5.101. Timeout procedures may only be used at times and under conditions specified in the facility's disciplinary or behavior management policies.

§ 5.102. When a child is placed in a timeout room, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it.

§ 5.103. Any child in a timeout room shall be able to communicate with staff.

§ 5.104. The use of timeout procedures shall not be used for periods longer than 30 consecutive minutes.

§ 5.105. Written documentation shall be maintained verifying that each child placed in a timeout room has been checked by staff at least every 15 minutes.

§ 5.106. A child placed in a timeout room shall have bathroom privileges according to need.

§ 5.107. If a meal is scheduled while a child is in timeout, the meal shall be provided to the child at the end of the timeout procedure.

Article 29.
Education.

§ 5.108. Each child of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. The facility shall provide educational guidance and counseling for each child in selection of courses and shall ensure that education is an integral part of the child's total program.

§ 5.110. Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

§ 5.111. When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the child's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

Article 30.
Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the children to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the child and any individual or agency considering the placement of a child in the facility.

§ 5.115. Children shall not be coerced to participate in religious activities.

Article 31.
Recreation.

§ 5.116. There shall be a written description of the recreation program for the facility showing activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the children and which includes:

1. Opportunities for individual and group activities;

2. Free time for children to pursue personal interests which shall be in addition to a formal recreation program;

3. Except in secure detention facilities, use of available community recreational resources and facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of losing, etc.).

§ 5.117. The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific activities.

§ 5.118. Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the children.

Article 32.
Community Relationships.

§ 5.119. Opportunities shall be provided for the children in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. Community interest in children and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the children.

Article 33.
Clothing.

§ 5.121. Provisions shall be made for each child to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. Children shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. Each child's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. The child shall be allowed to take personal clothing when the child leaves the facility.

Article 34.
Allowances and Spending Money.

§ 5.126. The facility shall provide opportunities appropriate to the ages and developmental levels of the children for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. The written policy regarding allowances shall be made available to parents ~~and/~~ or guardians *, or both,* at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. The facility shall provide for safekeeping and for record keeping of any money that belongs to children.

Article 35.
Work and Employment.

§ 5.130. Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the child.

§ 5.131. Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the parent, guardian or placing agency except that this section does not apply to secure detention facilities.

§ 5.133. The facility shall ensure that any child employed

inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a child shall accrue to the sole benefit of that child.

Article 36.
Visitation at the Facility and to the Child's Home.

§ 5.135. The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges and flexible visiting hours.

§ 5.136. Copies of the written visitation policies and procedures shall be made available to the parents, guardians, the child and other interested persons important to the child no later than the time of admission except that when parents or guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

Article 37.
Use of Vehicles and Power Equipment.

§ 5.137. Any transportation provided for ~~and/~~ or used by children shall be in compliance with state, federal ~~and/~~ or international laws relating to:

1. Vehicle safety and maintenance;

2. Licensure of vehicles; and

3. Licensure of drivers.

§ 5.138. There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. There shall be written safety rules for the use and maintenance of vehicles and power equipment.

Article 38.
Reports to Court.

§ 5.140. When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virgnia) submitted to the court shall be filed in the child's record except that this section does not apply to secure detention facilities.

Article 39.
Emergency Reports.

§ 5.141. Any serious incident, accident or injury to the child; any overnight absence from the facility without permission; any runaway; ~~and/~~ or any other unexplained absence shall be reported to the parent/guardian/placing agency within 24 hours.

§ 5.142. The child's record shall contain:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the parent/guardian or placing agency; and

6. The name of the person to whom the report was made.

Article 40.
Suspected Child Abuse or Neglect.

§ 5.143. Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. The child's record shall include:

1. Date and time the suspected abuse or neglect occurred;

2. Description of the incident;

3. Action taken as a result of the incident; and

4. Name of the person to whom the report was made at the local department.

PART VI.
DISASTER OR EMERGENCY PLANS.

Article 1.
Procedures for Meeting Emergencies.

§ 6.1. Established written procedures shall be made known to all staff and residents, as appropriate for health and safety, for use in meeting specific emergencies including:

1. Severe weather;

2. Loss of utilities;

3. Missing persons;

4. Severe injury; and

5. Emergency evacuation including alternate housing.

Article 2.
Written Fire Plan.

§ 6.2. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;

2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of residents with special needs, and checking to ensure complete evacuation of the building(s);

3. A system for alerting fire fighting authorities;

4. Use, maintenance and operation of fire fighting and fire warning equipment;

5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;

6. Posting of floor plans showing primary and secondary means of egress; and

7. Other special procedures developed with the local fire authority.

§ 6.4. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.

§ 6.6. The procedures and responsibilities reflected in the written fire plan shall be made known to all staff and residents.

Article 3.
Posting of Fire Emergency Phone Number.

§ 6.7. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

Article 4.
Portable Fire Extinguishers.

§ 6.8. Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 140 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

Article 5.
Smoke Alarms.

§ 6.13. Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and properly installed smoke detector:

1. In each bedroom hallway;

2. At the top of each interior stairway;

3. In each area designated for smoking;

4. In or immediately adjacent to each room with a furnace or other heat source; and

5. In each additional location directed by the local building official, the local fire authority, ~~and/~~ or the state fire authority.

§ 6.14. Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Article 6.
Fire Drills.

§ 6.17. At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by children.

§ 6.18. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;

2. Practice in building evacuation procedures;

3. Practice in alerting fire fighting authorities;

4. Simulated use of fire fighting equipment;

5. Practice in fire containment procedures; and

6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. False alarms shall not be counted as fire drills.

§ 6.21. The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;

2. Date of drill;

3. Time of drill;

4. Amount of time to evacuate building;

5. Specific problems encountered;

6. Staff tasks completed:

a. Doors and windows closed,

b. Head count,

c. Practice in notifying fire authority, and

d. Other;

7. Summary; and

8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the facility's written fire plan;

2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;

3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and

4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

Article 7.
Staff Training in Fire Procedures.

§ 6.25. Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

Article 8.
"Sighted Guide" Training for Emergency Use.

§ 6.27. When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities.

§ 6.28. "Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-01. Virginia Pollutant Discharge Elimination System and Virginia Pollution Abatement Permit Program.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Date: June 21, 1989

NOTICE: Due to its length the Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement Permit Program, filed by the State Water Control Board, is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary, in lieu of full text, explaining the amendments is being published. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and the State Water Control Board.

Summary:

The Permit Regulation, VR 680-14-01, delineates the authority and general procedures to be followed in connection with any Virginia Pollutant Discharge Elimination System (VPDES) permits issued by the board authorizing discharges of pollutants into state waters pursuant to §§ 402, 318, and 405 of the Clean Water Act and § 62.1-44.2 et seq. of the Code of Virginia and in connection with any Virginia Pollution Abatement (VPA) permits issued by the board.

The majority of the revisions to the regulation are changes made to ensure the VPDES permit program conforms with the federal regulations for the national permit program.

The proposed amendment to the requirement for issuance of a permit prior to commencing erection, construction or expansion or employment of new processes at any site was not adopted. Instead, a sentence was added to § 2.1 A 2.a to clarify the intent of the regulation.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-19-02.69 Notice of Description of Shellfish Area Condemnation Number 69B, James River.**

Statutory Authority: §§ 28.1-177, 32.1-20 and 9-6.14:4.1 C 5 of the Code of Virginia.

Effective Dates: May 12, 1989 through May 11, 1990

Summary:

REQUEST: An emergency shellfish closure is required on the James River and its tributaries as a result of upstream flooding caused by heavy rains on the watershed for several weeks. National Shellfish Sanitation Program requirements do not permit the classification of shellfish growing areas as approved if they are exposed to contaminants associated with excessive runoff and those washed into the river by floodwaters.

BACKGROUND: On April 8, 1988, a judge in Newport News General District Court dismissed two cases where watermen were charged with illegally harvesting shellfish in a condemned shellfish area in the James River. Since then 14 other cases have been dismissed. The basis for the dismissals was that the condemnation notices are regulations but were not issued according to the provisions of the Administrative Process Act (APA). Consequently, all of the current shellfish condemnations have subsequently been brought under the APA as emergency regulations effective for one year. At the 1988 General Assembly veto session, Virginia Department of Health (VDH) condemnation orders were added to § 9-6.14:4.1, Exemptions and Exclusions, which removed the public hearing requirement. However, a paragraph was also added by the General Assembly which stated that the effective date of regulations adopted under this subsection shall be effective thirty days after publication in the Virginia Register. The result of this requirement is that VDH may no longer change the classification of shellfish growing areas in an expeditious manner. This becomes critical in the case of catastrophic events where public health is at immediate risk and the thirty day waiting period is unacceptable.

RECOMMENDATION: The Code of Virginia allows the State Health Commissioner to declare a shellfish growing area to be condemned for the direct marketing of shellfish on an emergency basis. If this closure is not imposed, there is a very real possibility of contaminated shellfish getting on the market and causing an epidemic. Therefore, we are recommending to the Governor that this area be condemned for the direct marketing of shellfish.

The 1989 General Assembly passed legislation that would negate the requirement of having to adopt this regulation under the emergency procedures of the Administrative Process Act. However, the new legislation will not become effective until July 1, 1989. Consequently, it is necessary to adhere to the existing procedure for promulgating this emergency regulation.

/s/ Robert B. Stroube, M.D.
for C.M.G. Buttery, M.D., M.P.H.
State Health Commissioner
Date: May 11, 1989

Concur:

/s/ Maston T. Jacks, Deputy Secretary
for Eva S. Teig
Secretary of Health and Human Resources
Date: May 12, 1989

Approved:

/s/ Gerald L. Baliles
Governor
Date: May 12, 1989

Filed:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: May 12, 1989 - 10:33 a.m.

EMERGENCY REGULATION

NOTICE AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 69B, JAMES RIVER

Nature of Emergency

Unusually heavy rains on the James River watershed have caused flooding upstream of the shellfish growing areas. These areas have therefore been subjected to excessive runoff and contaminants washed into the river by flood waters. The presence of bacterial contaminants and fresh water runoff have been confirmed by sampling and analysis of the affected area by the Division of Shellfish Sanitation. Additional bacteriological seawater sampling will be instituted in order that the emergency closure may be removed as soon as water quality conforms to the standards for an approved shellfish growing area.

Necessity for Action

Since shellfish will bioaccumulate contaminants such as bacteria, viruses, heavy metals, radionuclides, pesticides, and herbicides, and are often eaten raw, condemnations are established around all actual or potential pollution sources in order to prevent contaminants from reaching adjacent approved shellfish growing areas. Should an accident occur, ordinarily approved shellfish growing areas must be restricted for direct harvesting for as long as the effects of the contamination are present. The marketing of

shellfish from areas subject to contamination from sewage poses a severe threat to the public health.

Virginia is a participant in the National Shellfish Sanitation Program (NSSP). The NSSP determines the shellfish control requirements that must be carried out in order for a state's shellfish industry to ship its products in interstate commerce. The proper classification of shellfish growing areas relative to their safety for direct marketing, along with a strong enforcement program to prevent harvesting from those areas that are contaminated, is an essential component of the NSSP. Shellfish areas that fail to meet established requirements must be condemned and violators rigorously prosecuted.

NOTICE OF ESTABLISHMENT AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 69B, JAMES RIVER

EFFECTIVE MAY 12, 1989 TO MAY 11, 1990

1. Pursuant to §§ 28.1-178, 32.1-13, 32.1-20 and 9-6.14:4.1 C5 of the Code of Virginia, an emergency closure on the James River is hereby established. It shall be unlawful for any person, firm, or corporation to take shellfish from this area for any purpose except by permit granted by the Marine Resources Commission, as provided in § 28.1-179 of the Code of Virginia. The boundaries of this area are shown on map titled "James River, Condemned Shellfish Area No. 69B, Emergency Closure" which is a part of this notice.

2. Because the area described below has been subjected to floodwaters and is likely to be polluted and is not a safe area from which to take shellfish for direct marketing, and because shellfish exist in such area, an emergency exists and the immediate promulgation of this regulation is needed to protect the public health.

3. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this emergency regulation. In addition, the Department of Health has initiated a sampling program and will reopen the area closed by this regulation once the area has been shown to meet the guidelines for an approved shellfish harvesting area.

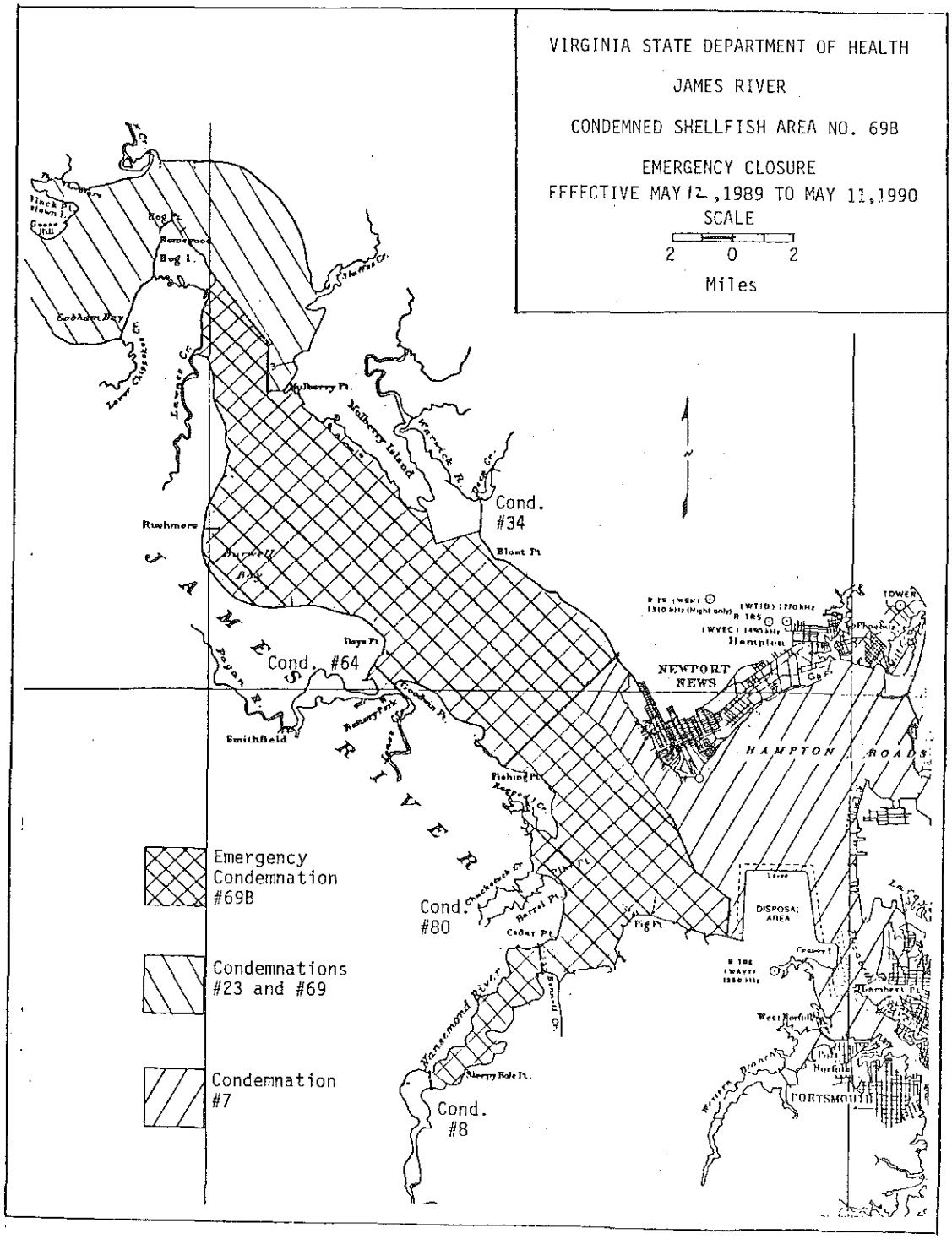
BOUNDARIES OF EMERGENCY CLOSURE 69B

The condemned area shall include all of that portion of the James River and its tributaries located downstream of the downstream boundaries of condemned shellfish areas number 23 and 69 and upstream of the upstream boundaries of condemned shellfish area number 7.

Recommended by: /s/ Clyde W. Wiley
Director, Division of Shellfish Sanitation

Ordered by: C. M. G. Buttery, M.D., M.P.H.
State Health Commissioner

Date: May 11, 1989


VIRGINIA STATE DEPARTMENT OF HEALTH
JAMES RIVER
CONDEMNED SHELLFISH AREA NO. 69B
EMERGENCY CLOSURE
EFFECTIVE MAY 12, 1989 TO MAY 11, 1990
SCALE
2 0 2
Miles
Cond. #34
Cond. #64
Cond. #80
Cond. #8
Rushmere
Smithfield
NEWPORT NEWS
HAMPTON ROADS
PORTSMOUTH
DISPOSAL AREA
Emergency Condemnation #69B
Condemnations #23 and #69
Condemnation #7

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **State Plan for Medical Assistance Relating to Eligibility for Children to Age 2 at 100% of Poverty.**
VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.
VR 460-03-3.1120. Case Management Services.

Statutory Authority: § 32.1-324 of the Code of Virginia

Effective Dates: July 1, 1989 through June 30, 1990.

SUMMARY

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Eligibility for Children, to Age 2, at 100% of Poverty. This eligibility policy is expected to contribute to further reductions in the Commonwealth's infant mortality rates by ensuring healthier beginnings for these children.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action concerning Eligibility for Children, to Age 2, at 100% of Poverty. The Department intends to initiate the public notice and comment requirements contained in § 9-6.14:7.1 of the Code of Virginia as soon as possible.

   /s/ Bruce U. Kozlowski, Director
   Date: April 18, 1989

3. CONCURRENCES:

   Concur:

   /s/ Eva S. Teig
   Secretary of Health and Human Resources
   Date: April 24, 1989

4. GOVERNOR'S ACTION:

   Approved:

   /s/ Gerald L. Baliles
   Governor
   Date: April 26, 1989

5. FILED WITH:

   /s/ Ann M. Brown
   Deputy Registrar of Regulations
   Date: May 2, 1989

DISCUSSION

6. BACKGROUND: Public Law 100-360 known as The Medicare Catastrophic Coverage Act of 1988 made it mandatory for state Medicaid programs to cover children up to age one at 100% of the Federal Income Poverty Guideline. Medicaid is able to cover for this group services such as health education, nutritional counseling and targeted case management. The same law offered states the option of providing coverage to children up to age two at 100% of poverty. The 1989 Virginia General Assembly elected this option in an effort to assure healthier beginnings to children born into indigent households. Because infant mortality rates in Virginia have been higher than the national average, this expansion of the Medicaid Program, along with previous expansions for pregnant women and children, should serve to further reduce Virginia's infant mortality rates.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of the Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

   The 1989 General Assembly approved this provision in the Appropriations Act to fund the addition of this new group of eligible children effective July 1, 1989.

   Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1989 effective date established by the General Assembly.

8. FISCAL/BUDGETARY IMPACT: The 1989 General Assembly appropriated $400,000 for this expansion to the Medicaid Program.

   $200,000 GF
   200,000 NGF

   No additional impact is anticipated.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective on July 1, 1989. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to reimburse providers for covered services provided to these children.

10. Approval Sought for VR 460-02-2.2100 and VR 460-03.1.1120.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the attached regulation.

* * *

VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.

Agency	Citation(s)	Groups Covered
IV-A	1902(a)(10)(A)(i)(III) and 1905(n) of the Act, P.L. 98-369 (Section 2361) and P.L. 99-272 (Section 9511)	b. A child who is under five years of age and who would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the State's approved AFDC plan. The child must be born after-- /X/ September 30, 1983; or / / _____ (specify optional earlier date)
IV-A	1902(e)(5) of the Act, P.L. 99-272 (Section 9501)	7. A woman who, while pregnant, is eligible for, has applied for, and has received Medicaid under the approved State plan. The woman continues to be eligible, as though she were pregnant, for all pregnancy related and postpartum medical assistance under the plan for a 60-day period after her pregnancy ends. The 60-day period begins on the last day of her pregnancy. The pregnant woman remains eligible throughout the end of the 60-day postpartum period without regard to any change in family income.
IV-A	1902(e)(4) of the Act, P.L. 98-369 (Section 2362)	8. A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed eligible for [~~one year~~ two years] from birth as long as the mother remains eligible and the child remains in the same household as the mother.

*Agency that determines eligibility for coverage.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

ATTACHMENT 2.2-A
Page 17a
OMB NO.: 0938-0193

Agency*	Citation(s)	Groups Covered
	1902(a)(10)(A)(ii)(IX) and 1902(l) of the Act, P.L. 99-509 (Sections 9401(a) and (b))	X 13. The following individuals who are not described in section 1902(a)(10)(A)(i) of the Act whose income level (established at an amount up to 100 percent of the Federal nonfarm poverty line) specified in Supplement 1 to ATTACHMENT 2.6-A for a family of the same size, including the woman and infant or child and who meet the resource standards specified in Supplement 2 to ATTACHMENT 2.6-A: (a) Women during pregnancy (and during the 60-day period beginning on the last day of pregnancy) and infants under one year of age (effective April 1, 1987); XX (b) Children who have attained one year of age but not attained two years of age (effective October 1, 1987); ____ (c) Children who have attained two years of age but not attained three years of age (effective October 1, 1988); ____ (d) Children who have attained three years of age but not attained four years of age (effective October 1, 1989); ____ (e) Children who have attained four years of age but not attained five years of age (effective October 1, 1990). Infants and children covered under Items 13 (a) through (e) above who are receiving inpatient services on the date they reach the maximum age for coverage under the approved plan will continue to be eligible for inpatient services until the end of the stay for which the inpatient services are furnished.

*Agency that determines eligibility for coverage.

TN No._____ Approval Date _____ Effective date_____
Supersedes
TN No._____

VR 460-03-3.1120. Case Management Services.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

SUPPLEMENT 2 TO ATTACHMENT 3.1-A
Page 1
OMB No.: 0939-0193

STATE PLAN UNDER TILE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Virginia

CASE MANAGEMENT SERVICES

A.Target Group:To reimburse case management services for high-risk Medicaid-eligible pregnant women and children up to age [1 2.]

B.Areas of State in which services will be provided:

/X/ Entire State

/__/ Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of Services

/__/ Services are provided in accordance with section 1902(a)(10)(B) of the Act.

/X/ Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

VR 460-03-3.1120
Case Management Services

TN No. ____
Supersedes
TN No. ____

Approval Date _____ Effective Date _____

* * * * * * * *

Title of Regulation: **State Plan for Medical Assistance Relating to Dental Services Expansion under EPSDT. VR 460-03-3.1100. Amount, Duration and Scope of Services.**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: July 1, 1989 through June 30, 1990.

SUMMARY

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Dental Services Expansion under EPSDT. This dental policy will expand coverage services in conformance to federal regulations requiring the coverage of such services if indicated as a result of a screening.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action concerning Dental Services Expansion under EPSDT. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1 as soon as possible.

   /s/ Bruce U. Nozlowski
   Director
   Date: April 7, 1989

3. CONCURRENCES:

   /s/ Eva S. Teig
   Secretary of Health and Human Resources
   Date: April 12, 1989

4. GOVERNOR'S ACTION:

   /s/ Gerald L. Baliles
   Governor
   Date: April 28, 1989

5. FILED WITH:

   /s/ Joan W. Smith
   Registrar of Regulations
   Date: May 3, 1989 - 10:43 a.m.

DISCUSSION

6. BACKGROUND: Dental services are provided for recipients under the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) which is one of the mandatory services that states participating in Title XIX must provide. The EPSDT program provides for preventive health care services for eligible recipients from birth through 20 years of age. The Board of Medical Assistance Services has designated this regulatory action as a priority.

   The Health Care Financing Administration (HCFA) interprets federal regulation 42 CFR 441.56(c)(2) to mean that in addition to any treatment services included in the State Plan, the State Agency must provide through EPSDT dental care needed for the relief of pain and infection, restoration of teeth and maintenance of dental health. This interpretation of the federal regulation means that any medically necessary dental treatment must be provided. However, states may place limits on a service based on criteria such as medical necessity or establish utilization control procedures.

   The amendment will provide additional coverage for single permanent crowns, removable prosthetic appliances (such as complete and partial dentures), fixed prosthetic appliances (bridges), tooth guidance appliances, medically necessary full banded orthodontics, any necessary surgical preparation (alveoloplasty) for prosthetics, and any other needed dental services not currently covered in the State Plan but identified through an EPSDT screening. A preauthorization review system as is now used for certain covered dental services will be used for determining medical appropriateness of the new services.

   The amendment has program benefits which would promote the well being of children by preventing some harmful occurrences through early intervention. It has the long range potential of improving self esteem and prospects of employability, and represents the intent and purpose of the EPSDT Program.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

   The 1989 General Assembly approved House Bill 1150 which included expanding coverage of dental services under EPSDT effective July 1, 1989.

   The Code of Federal Regulations § 42 CFR 441.56(c)(2) requires the Department to provide, as part of its EPSDT Program, dental care needed for the relief of pain and infection, restoration of teeth and maintenance of dental health. The rule is interpreted to mean that any medically necessary dental service must be provided.

   Without an emergency regulation, this amendment to

the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1989 effective date established by the General Assembly.

8. FISCAL/BUDGETARY IMPACT: Based on statistics maintained when the Program covered these services, it was estimated that approximately 3,000 new procedures will be provided to about 2,500 clients, by adding permanent crowns and prosthetic service coverage. Approximately 150 clients would be eligible for orthodontics. Approximately 167,000 clients were eligible under EPSDT in 1987 and 47,000 received dental treatment. Expanding the coverage of dental care would increase the number of claims processed by approximately 10,000 claims per year. There would be an additional one time cost for printing and mailing notices and manual updates to dental providers. As these procedures were once covered and can easily be reactivated in the geographic fee file, there is no substantial systems cost. The review of these preauthorized services will be absorbed within current MEL.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective, once filed with the Registrar of Regulations, on July 1, 1989. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to reimburse providers for these expanded dental services through EPSDT.

10. Approval Sought for VR 460-03-3.1100.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the attached regulation.

* * *

State Plan for Medical Assistance Relating to Dental Services Expansion under EPSDT.
VR 460-03-3.1100. Amount, Duration and Scope of Services.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 ;rs of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. *The following services are also covered through preauthorization: medically necessary full banded orthodontics, tooth guidace appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges.* The following services are not covered: full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations; and inhalation analgesia.

D. The state agency may place appropriate limits on a service based on ~~dental~~ *medical* necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); *dentures (once per 5 years)* and extractions, *orthodontics, tooth guidance appliances,* permanent crowns *and bridges* , endodontics, patient education (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, and needles and all family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexant drugs prescribed for weight loss, are covered.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

12b. Dentures.

~~Not provided.~~

A. Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

BOARD OF NURSING

Title of Regulation: **VR 495-01-1. Board of Nursing Regulations (Part V - Certified Nurse Aides).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005

Effective Dates: May 11, 1989 through May 10, 1990.

APPROVAL OF EMERGENCY REGULATIONS OF THE VIRGINIA BOARD OF NURSING

I recommend approval of the proposed emergency regulations of the Virginia Board of Nursing cited as VR 495-01-1, which will become Part V of the Regulations of the Board of Nursing. A program to regulate nurse aides is required by the Federal Omnibus Budget Reconciliation Act of 1987. The Commonwealth responded to this mandate by the enactment of House Bill No. 1507 during the 1989 Session of the General Assembly, which became effective as Chapter 278 of the 1989 Acts of Assembly upon approval by the Governor on March 20, 1989.

/s/ Bernard L. Henderson, Jr., Director
Department of Health Professions
Date: April 27, 1989

I recommend approval of the proposed emergency regulations of the Virginia Board of Nursing entitled Part V, Certified Nurse Aides.

/s/ Eva S. Teig
Secretary of Health and Human Resources
Date: May 1, 1989

I approve the proposed emergency regulations of the Virginia Board of Nursing entitled Part V, Certified Nurse Aides.

/s/ Gerald L. Baliles, Governor
Date: May 9, 1989

Date Received by Registrar of Regulations: May 11, 1989 - 9:55 a.m.
/s/ Ann M. Brown
Deputy Registrar of Regulations

Preamble:

The federal Omnibus Budget Reconciliation Act (OBRA) of 1987 establishes requirements for states, as a condition for Medicare and Medicaid reimbursement, to implement a program for the following:

1. By not later than January 1, 1989, specify the nurse aide training and competency evaluation programs.

2. By not later than January 1, 1989, establish a registry for nurse aides.

3. By January 1, 1990, provide for review and reapproval of all nurse aide training and competency evaluation programs.

Since continued approval of its agreements with the federal government is contingent upon the establishment of this program, the Commonwealth of Virginia through its various components has taken the steps necessary for implementation. The Virginia General Assembly, during the 1989 session, adopted House Bill 1507 authorizing the Board of Nursing to

1. Certify and maintain a registry of all certified

nurse aides;

2. Prescribe minimum standards and approve curricula for educational programs preparing persons for certification as nurse aides.

3. Promulgate regulations consistent with federal law and regulations; and

4. Take action against a certificate holder as allowed by §§ 54.1-3007 and 54.1-3009 of the Code of Virginia.

The timetable from OBRA cited above required that the enabling statutes be introduced as emergency legislation to be effective from passage. As the bill was pending in the General Assembly, a series of meetings were held between representatives of the Department of Health, Department of Medical Assistance Services, Department of Health Professions and Department of Planning and Budget with a goal of establishing the basis for the Board of Nursing to implement the requirements of the new statutes in a timely and efficient manner following signature by the governor. Governor Baliles signed the bill on March 20, 1989.

The Board of Nursing has developed proposed emergency regulations. These regulations are presented as a new Part V of the Virginia Board of Nursing regulations (VR 495-01-1). As more permanent regulations are developed, merger with other parts of the existing regulations will occur where appropriate.

The Division of Licensure and Certification of the Department of Health is receiving information to establish the initial registry of qualified nurse aides who have been deemed by that agency to be competent. Individuals complying with the requirements of the Department of Health will be transferred to and added to the Board of Nursing registry. The Division of Licensure and Certification publishes a list of approved Geriatric Nursing Assistant Training Programs. The programs on this list as of June 30, 1989, will be eligible for the initial post approval review described in § 5.4.I. of these regulations. Section 5.4.A of the proposed emergency regulations establishes the requirements for approving additional programs not on the list on June 30, 1989.

PART V.

CERTIFIED NURSE AIDES.

Authority: §§ 54.1-2400, 54.1-3000, 54.1-3005, 54.1-3007, 54.1-3009, 54.1-3022, 54.1-3023, 54.1-3024, 54.1-3025, 54.1-3026, 54.1-3027 and 54.1-3028.

§ 5.1. Definitions.

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

"Nurse aide education program" means a program designed to prepare nurse aides, offered by a school, college, nursing facility or other institution authorized to conduct such a program.

"Nursing facility" means a licensed nursing home or a Medicare or Medicaid certified skilled or intermediate care facility or unit.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" menas a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means a school, college, nursing facility or other institution that conducts a nurse aide education program.

§ 5.2. Delegation of authority.

The Executive Director of the board shall issue a certificate as a Certified Nurse Aide to each applicant who qualifies for such a certificate under §§ 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia.

§ 5.3. Fees.

Application for nurse aide certification - - - - $15

§ 5.4. Nurse aide education programs.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with § 5.4.B. of these regulations.

3. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

4. If approval is denied the program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

B. Maintaining an approved nurse aide education program.

To maintain approval, the nurse aide education program shall demonstrate evidence of compliance with the following essential elements:

1. Curriculum content and length as set forth in § 5.4.C.1-3. of the regulations.

2. Maintenance of qualified instructional personnel.

3. Classroom facilities that meet requirements set forth in § 5.4.H. of these regulations.

4. Maintenance of records of graduates' performance on the competency evaluation.

5. Skills training experience in a clinical facility which was not terminated from the Medicare or Medicaid programs during the past two years.

6. Maintenance of a record showing disposition of complaints against the program.

C. Instructional personnel.

1. Program coordinator/primary instructor.

a. Nursing facility based programs.

*(1) The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program.**

*Implementing instructions, dated April 1989, from the Health Care Financing Administration, of the U.S. Department of Health and Human Services, state that, "When the program coordinator is the director of nursing, qualified assistance must be available so that the nursing service responsibilities of the director of nursing are covered."

(2) The primary instructor shall hold a current Virginia license as a registered nurse and shall have at least one year of experience, within the preceding five years, in a nursing facility.

b. Programs other than those based in nursing facilities.

The program coordinator/primary instructor, who does the actual teaching of the students, shall hold a current Virginia license as a registered nurse and shall have two years of experience, within the preceding five years, in caring for the elderly and/or chronically ill of any age. Such experience may include, but not be limited to, employment in a nurse aide education program or in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

c. Prior to being assigned to teach the nurse aide education program, the program coordinator/primary instructor shall demonstrate competence to teach adults by one of the following:

(1) Complete satisfactorily a "train-the-trainer" program approved by the board; or

(2) Complete satisfactorily a credit or noncredit course or courses approved by the board, the content of which must include:

(a) basic principles of adult learning;

(b) teaching methods and tools for adult learners; and

(c) evaluation strategies and measurement tools for assessing the learning outcomes; or

(3) Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.

2. Each of the other instructional personnel responsible for clinical instruction shall hold a current Virginia license as a registered nurse and have had at least two years of direct patient care experience as a registered nurse.

3. The program may utilize resource personnel to meet the planned program objectives for specific topics.

4. When students are giving direct care to residents in clinical areas the maximum ratio of students to each instructor shall be ten students to one instructor.

D. Curriculum.

1. The objective of the nurse aide education program shall be to prepare a nurse aide to provide quality services to residents under the supervision of licensed personnel. The graduate of the nurse aide education program shall be prepared to:

a. Communicate and interact competency on a one-to-one basis with the residents;

b. Demonstrate sensitivity to residents' emotional, social, and mental health needs through skillful directed interactions;

c. Assist residents in attaining and maintaining functional independence;

d. Exhibit behavior in support and promotion of residents rights; and

e. Demonstrate skills in observation and documentation needed to participate in the assessment of residents' health, physical condition

and well-being.

2. Content.

The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum (minimum 16 hours). The classroom instruction prior to the direct involvement of a student with a nursing facility resident must include, at a minimum, the topics listed below:

(1) communication and interpersonal skills

(2) infection control

(3) safety and emergency procedures

(4) promoting resident independence

(5) respecting residents' rights

b. Basic skills.

(1) recognizing abnormal signs and symptoms of common diseases and conditions (e.g., shortness of breath, rapid respirations, fever, coughs, chills, pains in chest, blue color to lips, pain in abdomen, nausea, vomiting, drowsiness, sweating, excessive thirst, pus, blood or sediment in urine, difficulty urinating, urinating in frequent small amounts, pain or burning on urination, urine with dark color or strong odor) which indicate that the licensed nurse should be notified.

(2) measuring and recording routine vital signs.

(3) measuring and recording height and weight.

(4) caring for the residents' environment.

(5) measuring and recording fluid and food intake and output.

(6) performing basic emergency measures.

(7) caring for resident when death is imminent.

c. Personal care.

(1) bathing and oral hygiene

(2) grooming

(3) dressing

(4) toileting

(5) assisting with eating and hydration including proper feeding techniques

(6) caring for skin

d. Individual resident's needs including mental health and social service needs.

(1) identifying the psychosocial characteristics of the populations who reside in nursing homes.

(2) modifying behavior in response to behavior of residents.

(3) identifying developmental tasks associated with the aging process.

(4) providing training in and the opportunity for self care according to residents' capabilities.

(5) demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

(6) demonstrating skills supporting age-appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with residents' dignity.

(7) utilizing resident's family or concerned others as a source of emotional support.

e. Basic restorative services.

(1) using assistive devices in ambulation.

(2) eating and dressing.

(3) maintaining range of motion.

(4) turning and positioning, both in bed and chair.

(5) transferring.

(6) bowel and bladder training.

(7) caring for and using prosthetic devices.

(8) positioning of therapeutic devices.

f. Residents' rights.

(1) providing privacy and maintaining confidentiality.

(2) promoting the resident's right to make personal choices to accommodate individual needs.

(3) giving assistance in resolving grievances.

(4) providing assistance necessary to participate in resident and family groups and other activities.

(5) maintaining care and security of the resident's personal possessions.

(6) providing care that maintains the resident free from abuse, mistreatment or neglect and reporting improper care to appropriate persons.

3. Unit objectives.

a. Objectives for each unit of instruction shall be stated in behavioral terms including measurable performance criteria.

b. Objectives shall be reviewed with the students at the beginning of each unit.

E. Skill record.

Each nurse aide education program shall develop an individual performance record of major duties and skills taught. This record will consist of, at a minimum, a listing of the duties and skills expected to be learned in the program, space to record when the nurse aide student performs this duty or skill, spaces to note satisfactory or unsatisfactory performance, the date of performance, and the instructor supervising the performance. At the completion of the nurse aide education program, the nurse aide and his employer must receive a copy of this record.

F. Student identification.

The nurse aide students shall wear identification that is clearly recognizable to residents, visitors and staff.

G. Length of program.

1. The program shall be at least 80 hours in length.

2. The program shall provide for at least 16 hours of instruction prior to direct involvement of a student with a nursing facility resident.

3. Skills training in clinical settings shall be at least 40 hours.

4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.

H. Classroom facilities.

The nurse aide education program shall provide facilities that meet federal and state requirements including

1. Comfortable temperatures

2. Clean and safe conditions

3. Adequate lighting

4. Adequate space to accommodate all students

5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.

I. Initial Post Approval Review.

1. Nurse aide education programs approved by June 30, 1989, shall submit required information documenting the implementation of and compliance with the requirements of § 5.4.B.-H of these regulations no later than January 1, 1990.

2. The information shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.

3. If the board determines that a nurse aide education program has not implemented or complied with the requirements of § 5.4.B.-H. of these regulations, the program shall be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

4. If the program fails to correct the identified deficiencies within the time specified by the Board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.)

J. Ongoing review.

1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.

2. The report of the site visit shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.

3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on site review is not conducted.

4. A nurse aide education program shall continue to be approved provided the requirements set forth in § 5.4.B.-H. of these regulations are maintained.

5. If the board determines that a nurse aide education program is not maintaining the requirements of § 5.4.B.-H. of these regulations, the program shall be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et

seq.)

6. If the program fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.)

K. Curriculum changes.

Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.

L. Closing of a nurse education program.

When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

§ 5.5. Nurse aide competency evaluation.

A. The board may contract with a test service for the development and administration of a competency evaluation.

B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.

C. The board shall determine the minimum passing score on the competency evaluation.

§ 5.6. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must

a. Satisfactorily complete a nurse aide education program approved by the board;

b. Pass the competency evaluation required by the board; and

c. Submit the required application and fee to the board.

2. Initial certification by endorsement.

a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and been registered in another state may apply for certification in Virginia by endorsement.

b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered Certified Nurse Aide.

2. The Certified Nurse Aide shall return the completed application with the required fee and verification of employment within the preceding two years.

3. Failure to recieve the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not worked in a nursing facility during the two years preceding the expiration date of the certification shall repeat an approved nurse aide education program and the nurse aide competency evaluation prior to applying for recertification.

C. Evidence of change of name.

A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

D. Requirements for current mailing address.

1. All notices required by law and by these regulations to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.

2. Each certificate holder shall maintain a record of his current mailing address with the board.

3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 24, 1989

PETITION OF

AT&T COMMUNICATIONS
OF VIRGINIA, INC.

CASE NO. PUC890012

To modify Rule 11 of the Rules
Governing the Certification of
InterLATA, Interexchange Carriers

ORDER EXTENDING DEADLINE FOR COMMENTS

By Order of April 6, 1989, the Commission invited comments upon a proposed modification to Rule 11 of Rules Governing the Certification of InterLATA Interexchange Carriers to permit interexchange carriers to reduce rates without public notice.

Because that Order could not be published in the Virginia Register before May 22, 1989, it is necessary to extend the deadline for comments to June 30, 1989.

Accordingly, the Commission invites comments on or before June 30, 1989 upon its proposal to change Rule 11 to read as follows:

> Carriers shall give notice of proposed rate increases to subscribers by (1) billing inserts furnished at least two weeks prior to the increase, or (2) publication for two consecutive weeks as display advertising in newspapers having general circulation in the area served by the carrier with the last publication appearing at least two weeks prior to the increase, or (3) direct written notification to each affected subscriber at least two weeks prior to the increase. The notice shall state the subscribers' existing rates, the proposed rates and the percentage change between the two. Rate revisions which result in no increase to any subscriber may be implemented without notice.

ACCORDINGLY, IT IS THEREFORE ORDERED:

(1) That the proposed revision of Rule 11 be published in the Virginia Register;

(2) That any person desiring to comment upon the proposed revision of Rule 11 submit written comments to George W. Bryant, Jr., Clerk, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23216 on or before June 30, 1989 and refer to Case No. PUC890012; and

(3) That if no opposition is stated to the proposed revision, the Commission may enter a Final Order herein without the necessity of a hearing.

ATTESTED COPIES hereof shall be sent to all of Virginia's certificated local exchange telephone companies as indicated in Appendix A attached hereto; to all of Virginia's certificated interexchange carriers as indicated in Appendix B attached hereto; to Wilma R. McCarey, Esquire, 3201 Jermantown Road, #3A2, Fairfax, Virginia 22030-2087; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; to the Commission's Office of General Counsel; and to the Commission's Divisins of Communications, Accounting and Finance and Economic Research and Development.

APPENDIX A

TELEPHONE COMPANIES IN VIRGINIA

Mr. Joseph E. Hicks, President
Amelia Telephone Corporation
P.O. Box 158
Leesburg, Alabama 35983

Mr. Raymond L. Eckels, Manager
Amelia Telephone Corporation
P.O. Box 76
Amelia, Virginia 23002

Mr. M. Dale Tetterton, Jr., Manager
Buggs Island Telephone Cooperative
P.O. Box 129
Bracey, Virginia 23919

Ms. Sue B. Moss, President
Burke's Garden Telephone Exchange
P.O. Box 428
Burke's Garden, Virginia 24608

Mr. J. Thomas Brown
Vice President and Division Manager
Central Telephone Company of Virginia
P.O. Box 6788
Charlottesville, Virginia 22906

Mr. Hugh R. Stallard, President
Chesapeake & Potomac Telephone Company
600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Mr. James R. Newell, Manager
Citizens Telephone Cooperative
P.O. Box 137
Floyd, Virginia 24091

Mr. Robert S. Yeago, President
Clifton Forge-Waynesboro Telephone Company
P.O. Box 2008
Staunton, Virginia 24401

Mr. Clarence Prestwood, President
Contel of Virginia, Inc.
9380 Walnut Grove Road
P.O. Box 900

Mechanicsville, Virginia 23111-0900

Mr. T. S. Morris, General Manager
GTE South
210 Bland Street
Bluefield, West Virginia 24701

Mr. L. Ronald Smith, General Manager
Mountain Grove-Williamsville Telephone Company
P.O. Box 105
Williamsville, Virginia 24487

Mr. T. A. Glover, Manager
Highland Telephone Cooperative
Monterey, Virginia 24465

Mr. K. L. Chapman, Jr., President
New Hope Telephone Company
P.O. Box 38
New Hope, Virginia 24469

Mr. W. Richard Fleming, Manager
North River Telephone Cooperative
P.O. Box 8
Dayton, Virginia 22821

Mr. Ross E. Martin, General Manager
Pembrook Telephone Cooperative
P.O. Box 549
Pembroke, Virginia 24136-0549

Mr. E. B. Fitzgerald, Jr.
President and General Manager
Peoples Mutual Telephone Company, Inc.
P.O. Box 367
Gretna, Virginia 24557

Mr. Ira D. Layman, Jr., President
Roanoke and Botetourt Telephone Company
Daleville, Virginia 24083

Mr. James W. McConnell, Manager
Scott County Telephone Cooperative
P.O. Box 487
Gate City, Virginia 24251

Mr. Christopher E. French
President
Shenandoah Telephone Company
P.O. Box 459
Edinburg, Virginia 22824

Mr. Richard B. Cashwell, President
United Inter-Mountain Telephone Company
112 Sixth Street, P.O. Box 699
Bristol, Virginia 37620

Mr. Dennis H. O'Hearn, General Manager
Virginia Hot Springs Telephone Company
P.O. Box 699
Hot Springs, Virginia 24445

APPENDIX B

OTHER COMMON CARRIERS

Mr. Gregory F. Allen, Vice President
AT&T Communications of Virginia
Three Flint Hill
3201 Jermantown Road, Room 3B
Fairfax, Virginia 22030-2885

Mr. Robert S. Yeago, President
Clifton Forge-Waynesboro Telephone Company
P.O. Box 2008
Staunton, Virginia 24401

Mr. Dallas Reid
Contel of Virginia, Inc.
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Ms. Mary Rouleau
Institutional Communications Company - Virginia
2000 Corporate Ridge
McLean, Virginia 22102

Mr. William F. Marmon, Jr.
MCI Telecommunications Corp. of Virginia
Mid-Atlantic Division
601 South 12th Street
Arlington, Virginia 22202

Mr. Allen Layman, Executive Vice President
Roanoke & Botetourt Telephone Company
P.O. Box 174
Daleville, Virginia 24083

Mr. Christopher E. French
President & General Manager
Shenandoah Telephone Company
P.O. Box 459
Edinburg, Virginia 22824

Mr. David H. Jones
SoutherNet of Virginia, Inc.
61 Perimeter Street
Atlanta, Georgia 30341

Ms. Laura Burley, Manager
Regulatory Affairs
TDX Systems, Inc.
1919 Gallows Road
Vienna, Virginia 22180

Ms. Rita Barmann
U.S. Sprint Communications Company
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

Mr. Kevin J. Duane, Manager
Rates, Tariffs, Agreements

ITT Communications Services of Virginia, Inc.
100 Plaza Drive
Secaucuss, New Jersey 07096

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF AGRICLUTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-01. Rules and Regulations Relating to the Endangered Plant and Insect Species Act.**

Governor's Comment:

Pending public comment, I recommend approval of this regulation.

/s/ Gerald L. Baliles
Date: April 17, 1989

* * * * * * * *

Title of Regulation: **VR 115-04-04. Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law.**

Governor's Comment:

Pending public comment, I recommend approval of this regulation.

/s/ Gerald L. Baliles
Date: April 17, 1989

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-02-0000. Certification Regulations for Teachers.**

Governor's Comment:

I approve these proposed changes to the regulations governing recertification of teachers. However, I am concerned that they be consistent with the Board's policy of not requiring an advanced degree for recertification and with the recommendations of the Commission on Excellence in Education regarding more liberal arts education and discipline-specific preparation for teachers.

/s/ Gerald L. Baliles
Date: April 16, 1989

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **VR 460-04-8.3. Lock-In/Lock-Out Regulations.**

Governor's Comment:

This proposal is generally well-written and adequately documented. Although I have no major objections to the proposed regulations, I am asking the Board to reevaluate the proposed procedures for review of provider lock-out status for possible revision to ensure that there is an adequate claims history available for evaluation. Additional observations regarding these regulations will be contingent upon a review of comments received during the public comment period.

/s/ Gerald L. Baliles
Date: April 26, 1989

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Title of Regulation: **VR 627-01-01. Public Participation Guidelines.**

Governor's Comment:

No objection to the proposed regulation as presented.

/s/ Gerald L. Baliles
Date: April 17, 1989

* * * * * * * *

Title of Regulation: **VR 627-02-01. Board for Professional Soil Scientists Regulations.**

Governor's Comment:

No objection to the proposed regulations as presented.

/s/ Gerald L. Baliles
Date: April 17, 1989

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-16-03. Upper James River Basin Water Quality Management Plan (Jackson River Subarea).**

Governor's Comment:

The promulgation of these regulations is intended to ensure water quality standards for the Upper James River Basin. Pending public comment, I recommend approval of these regulations.

/s/ Gerald L. Baliles

Date: April 20, 1989

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Title of Regulation: **VR 675-01-01. Public Participation Guidelines.**

Governor's Comment:

Pending public comment, I recommend approval of this regulation.

/s/ Gerald L. Baliles
Date: April 17, 1989

Symbol Key †
† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-12. Rules and Regulations Pertaining to the Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds Into Virginia.** The purpose of the proposed regulation is to review present requirements for equine entering Virginia and to review the present regulation for currency and appropriateness.

Statutory Authority: §§ 3.1-724 and 3.1-730 of the Code of Virginia.

Written comments may be submitted until June 2, 1989, to William D. Miller, D.V.M., State Veterinarian, Department of Agriculture and Consumer Services; Division of Animal Health, Washington Building, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Department of Agriculture and Consumer Services, Division of Animal Health, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Alcoholic Beverage Control Board intends to consider promulgating, amending or repealing regulations entitled: **VR 125-01-1 through VR 125-01-7. Regulations of the Virginia Alcoholic Beverage Control Board.** The purpose of the proposed action is to receive information from industry, the general public and licensees of the board concerning adopting, amending or repealing the board's regulations.

Notice to the Public

Pursuant to its Public Participation Guidelines contained in § 5.1 of VR 125-01-1, the board intends to consider proposals to amend, repeal or develop regulations as set forth below and will conduct a public meeting on such proposals as indicated below:

1. **§ 1.3 of VR 125-01-1** - Hearings Before Hearing Officers/Attorneys.

a. **Subject of Proposal** - To eliminate the requirement that a corporation must be represented by an attorney at an initial hearing with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings.

b. **Entities Affected** - Manfacturers, bottlers, importers, wholesalers and retail licensees.

c. **Purpose of Proposal** - To comply with HB1203 which will become law on July 1, 1989.

d. **Issues Involved** - The amendment ensures that the regulation does not conflict with statutory law.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-98.14, 4-103(b) and Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

2. **§ 2.2 of VR 125-01-1** - Hearings Before the Board/Attorneys.

a. **Subject of Proposal** - To eliminate the requirement that a corporation must be represented by an attorney at an appeal hearing with respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings.

b. **Entities Affected** - Manufacturers, bottlers, importers, wholesalers and retail licensees.

c. **Purpose of Proposal** - To comply with HB1203 which will become law on July 1, 1989.

d. **Issues Involved** - The amendment ensures that the regulation does not conflict with statutory law.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-98.14, 4-103(b) and Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

3. **§ 3.1 of VR 125-01-1** - Wine and Beer Franchise Act/Complaint.

a. **Subject of Proposal** - To provide correct statutory citations.

b. **Entities Affected** - Manufacturers, importers and wholesalers of wine.

c. **Purpose of Proposal** - To change references from Chapter 2.2 (which was repealed February 18, 1989) of Title 4 of the Code to Chapter 2.3.

d. **Issues Involved** - To comply with Chapter 2.3 of Title 4.

e. **Applicable Laws or Regulations** - §§ 4-7(j), (k) and (l), 4-10, 4-11(a), Chapter 2.1 (§§ 4-118.3 et seq.), Chapter 2.3 (§§ 4-118.42 et seq.) of Title 4 and Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

4. **§ 2 of VR 125-01-2** - Advertising; Interior; Retail Licensees; Show Windows.

a. **Subject of Proposal** - To permit the interior advertisement of alcoholic beverages by the retail licensee through the use of printed paper and cardboard matter which is obtained from sources other than manufacturers, bottlers or wholesalers; to provide the correct regulation citation.

b. **Entities Affected** - Retail licensees; all licensees of the board.

c. **Purpose of Proposal** - To allow more interior advertising; to change § 9 F of VR 125-01-3 to § 8 F of VR 125-01-3.

d. **Issues Involved** - The amount of interior advertising to be permitted in retail establishments; this amendment ensures that the correct regulation subsection is cited.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-60(i), 4-69, 4-69.2, 4-98.10(w) and 4-98.14 of the Code of Virginia.

5. **§ 6 of VR 125-01-2** - Advertising; Novelties and Specialties.

a. **Subject of Proposal** - To cite the correct regulation subsection.

b. **Entities Affected** - All licensees of the board.

c. **Purpose of Proposal** - To change § 9 F of VR 125-01-3 to § 8 F of VR 125-01-3.

d. **Issues Involved** - This amendment ensures that the correct regulation subsection is cited.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

6. **§ 8 of VR 125-01-3** - Inducement to Retailers; Tapping Equipment, Bottle or Can Openers; Banquet Licensees; Cut Case Cards; Clip-Ons and Table Tents.

a. **Subject of Proposal** - To allow the sale of ice and the cleaning and servicing of equipment as currently specified in § 4-79 (c) and (e) of the Code of Virginia.

b. **Entities Affected** - Manufacturers, bottlers, importers, wholesalers and retail licensees.

c. **Purpose of Proposal** - To include all exceptions to §§ 4-79 and 4-79.1 in the regulations.

d. **Issues Involved** - This amendment ensures that the regulations cover all exceptions to §§ 4-79 and 4-79.1 of the Code of Virginia.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-69.2, 4-79(f) and (h), 4-79.1 and 4-98.14 of the Code of Virginia.

7. **§ 16 of VR 125-01-5** - Happy Hour and Related Promotions; Definitions; Exceptions.

a. **Subject of Proposal** - To limit the amount of alcoholic beverages (1 1/2 oz. of distilled spirits, 5 oz. of wine, or 12 oz. of beer) that may be served in a drink during happy hour.

b. **Entities Affected** - Retail licensees and the general public.

c. **Purpose of Proposal** - To treat all alcoholic beverages the same. Presently there are greater restrictions on distilled spirits than on wine and beer. The misconception has been, and continues, that wine and beer are safer products than distilled spirits. A 12 ounce of serving of beer has the same alcohol content as 1 1/2 ounces of 80 proof liquor or a 5 ounce glass of wine.

Some establishments are presently circumventing the intent of the A.B.C. regulations to limit drinks to two per customer at any one time. These establishments are serving beer in 32 ounce glasses.

d. **Issues Involved** - Establishing specified serving sizes for alcoholic beverage drinks during Happy Hour.

e. **Applicable Laws or Regulations** - §§ 4-7(l), 4-11(a), 4-69, 4-69.2, 4-98.10, 4-98.14 and 4-103(b) of the Code of Virginia.

f. Submitted by the Tidewater Council on Alcoholism.

8. **§ 9 of VR 125-01-7** - Records to be kept by Licensees Generally, Additional Requirements for Certain Retailers; "Sale" and "Sell" Defined; Gross Receipts; Reports.

a. **Subject of Proposal** - To change licensee record

keeping requirements for beer and 3.2 beverages to two years.

b. **Entities Affected** - Manufacturers, bottlers, importers, wholesalers and retailers of beer and 3.2 beverages.

c. **Purpose of Proposal** - To comply with § 4-136 of the Code of Virginia.

d. **Issues Involved** - The amendment ensures that the regulation is not in conflict with statutory law.

e. **Applicable Laws or Regulations** - §§ 4-7(1), 4-11(a), 4-44, 4-98.6, 4-98.7, 4-98.14 and 4-103(b) of the Code of Virginia.

9. **§ 13 of VR 125-01-7** - Special Mixed Beverage Licensees; Locations; Special Privileges; Taxes on Licenses.

a. **Subject of Proposal** - To permit the 45% sales figure for special mixed beverage licensees to be determined by reference to the combined sales of all places primarily engaged in the sale of meals within the same structure.

b. **Entities Affected** - All special mixed beverage licensees with retail establishments located on United States owned property which is used as a port of entry or egress to and from the United States.

c. **Purpose of Proposal** - To accommodate the Metropolitan Washington Airports Authority.

d. **Issues Involved** - How the 45% sales figure should be determined.

e. **Applicable Laws or Regulations** - §§ 4-98.2, 4-98.14 and 7.1-21.1 of the Code of Virginia.

10. Regulations are adopted by the board pursuant to authority contained in §§ 4-7(1), 4-11(a), 4-98.14, 4-103(b), 4-6.14 and 9-6.4:1 et seq. of Title 9 of the Code of Virginia.

11. The board requests that all persons interested in the above described subjects please submit comments in writing by **10 a.m. May 25, 1989, to the undersigned, P.O. Box 27491, Richmond, Virginia 23216** or attend the public meeting scheduled below.

12. The board will hold a public meeting and receive the comments or suggestions of the public on the above subjects. The board may also consider any other proposals that may be presented at the public meeting. The meeting will be in the First Floor Hearing Room at 2901 Hermitage Road, Richmond, Virginia, at 10 a.m. on May 25, 1989.

13. Regarding the proposals as set forth above, all references to existing regulations that may be the subject of amendment or repeal, all references to proposed numbers for new regulations or to applicable laws or regulations are for purposes of information and guidance only, and are not to be considered as the only regulations or laws that may be involved or affected when developing draft language to carry-out the purposes of any proposal. This notice is designed, primarily, to set forth the subject matter and objectives of each proposal. In developing draft language, it may be necessary to amend or repeal a number or existing regulations and/or adopt new regulations as may be deemed necessary by the board, and the references set forth above are not intended to be all inclusive.

Statutory Authority: §§ 4-7(1), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Written comments may be submitted until 10 a.m., May 25, 1989.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

BOARD FOR COMMERCIAL DRIVER EDUCATION SCHOOLS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Commercial Driver Education Schools intends to consider amending regulations entitled: **VR 200-01-02. Commercial Driver Education Schools Regulations.** The purpose of the proposed action is to solicit public comment on the existing regulation as to its effectiveness, efficiency, necessity and clarity in accordance with the board's Public Participation Guidelines.

Statutory Authority: § 54.1-1001 of the Code of Virginia.

Written comments may be submitted until June 22, 1989.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, SCATS 367-8534 or 1-800-552-3016 (toll-free)

BOARD OF CORRECTIONS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of

Corrections intends to consider promulgating regulations entitled: **VR 230-01-003. Rules and Regulations Governing the Certification Process.** The purpose of the proposed action is to provide regulations governing the process and procedures utilized by the Board of Corrections to monitor and certify correctional programs.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Written comments may be submitted until August 21, 1989.

Contact: John T. Britton, Certification Unit Manager, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237 or SCATS 634-3237

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard-of-Hearing intends to consider promulgating regulations entitled: **VR 245-01-01. Public Participation Guidelines.** The purpose of the proposed regulation is to seek public participation from interested parties prior to formation and during the drafting, promulgating and final adoption process of regulations.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until May 26, 1989.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard-of-Hearing, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-2570, SCATS 225-2570 or 1-800-553-7917 (toll-free)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard-of-Hearing intends to consider promulgating regulations entitled: **VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Telecommunications Equipment.** The purpose of the proposed regulation is to screen eligible hearing-impaired and speech-impaired residents of Virginia for the Telecommunications Assistance Program (TAP) and to determine the approved applicant's contribution toward the purchase of telecommunications equipment.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until May 26, 1989.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard-of-Hearing, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telehpone (804) 225-2570, SCATS 225-2570 or 1-800-552-7917 (toll-free)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard-of-Hearing intends to consider promulgating regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Hearing Impaired.** The purpose of the proposed regulation is to regulate the administration of interpreter services and the administration of quality assurance screenings.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until May 26, 1989.

Contact: Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard-of-Hearing, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-2570, SCATS 225-2570 or 1-800-552-7917 (toll-free)

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider promulgating regulations entitled: **Local Government Certification of Boiler and Pressure Vessel Operators.** The purpose of the proposed regulations is to establish standards for certification to be used by local jurisdictions in evaluating the ability, proficiency and qualifications of boiler and pressure vessel operators.

Statutory Authority: § 15.1-11.6 of the Code of Virginia.

Written comments may be submitted until June 8, 1989.

Contact: John J. Crisanti, Policy Analyst, Division of Planning and Policy Analysis, Department of Labor and Industry, 205 N. Fourth St., P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2385 or SCATS 786-2385

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Covered Nutrition Providers.** The purpose of the proposed action is to expand the qualifications that dieticians may have to enroll as service providers of Expanded Prenatal Care Services.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m. on May 22, 1989, to David Austin, Manager, Division of Health Services Review, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Nursing Home Interest Rate Upper Limit Modification.** The purpose of the proposed action is to modify the standard used for interest rate upper limits.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m. on May 22, 1989, to William Blakely, Acting Director, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider promulgating regulations entitled: **VR 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.** The purpose of the proposed action is to consider a petition for rulemaking; to amend Part II of Licensure and General Requirements, and § 2.2 A, Prerequisites to examination. The board will determine whether they should approve the addition of Straight Chiropractic Academic Standards Association, Inc., as an accredited agent for the selection of approved chiropractic colleges whose graduates would be eligible for licensure in Virginia.

Statutory Authority: § 54.1-2400(6) of the Code of Virginia.

Written comments may be submitted until Monday, June 12, 1989.

Contact: Eugina K. Dorson, Board Administrator, 1601 Rolling Hills Dr., Surry Bldg., 2nd Fl., Richmond, VA 23229-5005, telephone (804) 662-9925

Notice of Intended Regulatory

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider promulgating regulations entitled: **VR 464-04-01. Regulations Governing the Practice of Respiratory Therapy Practitioner.** The purpose of the proposed regulations is to promulgate the regulations for the certification of respiratory therapy practitioners issued on December 2, 1985, as emergency regulations.

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

Written comments may be submitted until 2 p.m., May 24, 1989.

Contact: Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to prescribe minimum standards for programs that entitle professional nurses to be registered as clinical nurse specialist and amend regulations to provide for other aspects of a registry of clinical nurse specialists as provided in the 1989 amendment to § 54.1-3005 of the Code of Virginia.

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

Written comments may be submitted until May 24, 1989.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909

DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Rehabilitative Services intends to consider promulgating regulations entitled: **State Plan Preprint for the State Vocational Rehabilitation Service Program and the State Supported Employment Services Program.** The purpose of the proposed regulation is to update state activities under the State Vocational Rehabilitation Services Program

authorized under Title I of the Rehabilitation Act of 1973, as amended, and the State Supported Employment Services Program authorized under Title VI, Part C of the Act covering Fiscal Years 1989, 1990 and 1991.

Statutory Authority: § 51.5-14 of the Code of Virginia.

Written comments may be submitted until July 8, 1989.

Contact: Robert J. Johnson, State Plan Coordinator, Department of Rehabilitative Services, 4901 Fitzhugh Ave., P.O. Box 11045, Richmond, VA 23230, telephone (804) 367-6379, SCATS 367-6379 or 1-800-552-5019 (toll-free)

DEPARTMENT OF TAXATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-1-1805.1. General Provisions: Padlocking Premises.** The purpose of the proposed regulation is to comply with the statutory provision found in 1989 Acts, Chapter 642 (SB 732) requiring that the Tax Commissioner promulgate regulations prior to effecting distraint of a taxpayer's property by way of padlocking the doors of a business enterprise that is seriously delinquent in filing or paying state taxes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until June 23, 1989.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, Virginia 23282, telephone (804) 367-8010 or SCATS 367-8010

GENERAL NOTICES

DEPARTMENT FOR THE AGING

General Notice

Notice of Public Comment Period on 1989-91 State Plan for Aging Services

Notice is hereby given that the Department for the Aging will accept comments on the proposed State Plan for Aging Services developed pursuant to Title III of the Older Americans Act, as amended. Interested persons may submit data, views, and arguments, either orally or in writing, to the department.

The State Plan for Aging Services will (i) identify the Virginia Department for the Aging as the sole state agency designated to develop and administer Title III programs in Virginia; (ii) identify the geographic boundaries of each Planning and Service Area in Virginia and the Area Agency on Aging designated for each Planning and Service Area; (iii) include a plan for the distribution and proposed use of Title III funds within Virginia; (iv) set forth statewide program objectives to implement the requirements of Title III; and (v) provide prior federal fiscal year information related to low-income minority and rural older persons in Virginia. The Plan is for the two-year period from October 1, 1989, through September 30, 1991. The department anticipates submitting the Plan to the federal Administration on Aging in August, 1989.

Five public hearings will be held on the Plan. Persons who testify at the hearings are encouraged to provide a written copy of their comments to the hearing officer. An interpreter for the hard-of-hearing will be provided upon request.

July 11, 1989
J. Sargeant Reynolds Community College
1651 Parham Road
Richmond, Virginia
7 p.m. - 9 p.m.

July 12, 1989
Norfolk State University
2401 Corprew Avenue
Norfolk, Virginia
7 p.m. - 9 p.m.

July 14, 1989
Northern Virginia Community College
6901 Sudley Road
Manassas, Virginia
10 a.m. - 12 p.m.

July 18, 1989
Virginia Highlands Community College
Room 605
Abingdon, Virginia
10 a.m. - 12 p.m.

July 19, 1989
Central Virginia Community College
3506 Wards Road South
Lynchburg, Virginia
10 a.m. - 12 p.m.

Written comments on the Plan may be submitted until 5 p.m. on July 21, 1989. Comments should be sent to: Mr. E. H. Spindle, Fiscal Director, Virginia Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia 23219-2327.

To receive copies of the proposed State Plan and to obtain further information, write to the Department for the Aging at the address above or call 804-225-2271 or toll-free in Virginia 1-800-552-4464.

DEPARTMENT OF LABOR AND INDUSTRY

† Notice to the Public

Notice is hereby given in accordance with this agency's Public Participation Guidelines that the Department of Labor and Industry intends to study the need and, if appropriate, the structure of a public-supported training program for boiler plant personnel in the Commonwealth.

Written comments may be submitted until June 22, 1989.

Contact: John J. Crisanti, Policy Analyst, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2385

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May 30, 1989 - 1 p.m. – Open Meeting
Roanoke County Administration Building, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

May 31, 1989 - 7 p.m. – Open Meeting
Fairfax City Council Chambers, Room 305, 10455 Armstrong Street, Fairfax, Virginia.

June 1, 1989 - 7 p.m. – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

June 7, 1989 - 7 p.m. – Open Meeting
Department of Motor Vehicles, Military Circle Branch Office, 5745 Poplar Hall Drive, Norfolk, Virginia.

In accordance with this agency's Public Participation Guidelines, comments on the proposed changes to the Virginia Voluntary Apprenticeship Act, Title 40.1, Chapter 6, §§ 40.1-117 through 40.1-126, will be accepted at the Open Meetings listed. Oral comments to be presented must be accompanied by a written copy. Written comments will be accepted at the meetings or by mail to Robert S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241 through June 7, 1989.

The proposed changes are as follows:

§ 40.1-117. Apprenticeship Council; membership and terms of office; meetings and duties.–A. The Governor shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations respectively, and all of whom shall be familiar with apprenticeable occupations. The Commissioner of the Virginia Employment Commission and the Executive Director of the State Council on Vocational Education, or their designated representative, shall be members, ex officio, of the Council. At the beginning of each year the Governor shall designate one member to serve as chairman. The original appointments having been for terms of one, two and three years and all successors having been appointed for three years, each member hereafter shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of such term. All members, including ex officio members, shall have voting privileges.

B. The Apprenticeship Council shall meet at the call of the chairman of the Council and shall formulate policies for the effective administration of this chapter.

C. The Apprenticeship Council shall establish standards for apprentice agreements which shall not be lower than those prescribed by this chapter and those established pursuant to subsection C of § 15.1-11.4, and shall perform such other functions as may be necessary to carry out the intent and purposes of this chapter. Not less than once a year the Council shall make a report of its activities and findings to the General Assembly and to the public.

§ 40.1-118. Authority of Council.–The Council may:

(1) Determine standards for apprentice agreements, which standards shall not be lower than those prescribed by this chapter;

(2) Appoint the secretary of the Apprenticeship Council to act as secretary of each state joint apprenticeship committee;

(3) Approve, if in their opinion approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established under this chapter;

(4) Terminate or cancel any apprentice agreement in accordance with the provisions of such agreement;

(5) Keep a record of apprentice agreements and their disposition;

(6) Issue certificates of journeymanship upon the completion of the apprenticeship;

(7) Perform such other duties as are necessary to carry out the intent of this chapter;

(8) Review decisions of local and state joint apprenticeship committees adjusting apprenticeship disputes pursuant to § 40.1-119 (3); and

(9) Initiate deregistration proceedings when the apprenticeship program is not conducted, operated and administered in accordance with the registered provisions except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

Provided, that the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the

selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

§ 40.1-119. Local and state joint apprenticeship committees.–A local joint apprenticeship committee ~~shall~~ *may* be appointed in any trade or group of trades in a city or trade area, by the Apprenticeship Council, whenever the apprentice training needs of such trade or group of trades justify such establishment. *Sponsors not signatory to a bargining agreement shall have the option to participate in a joint apprenticeship committee or individual program.*

When two or more local joint apprenticeship committees have been established in the state for a trade or group of trades or at the request of any trade or group of trades, the Apprenticeship Council may appoint a state apprenticeship committee for such trade or group of trades. Such local and state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective employer and employee organizations in such trade or group of trades. ~~In a trade or group of trades in which there is no bona fide employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees respectively.~~

The functions of a local joint apprenticeship committee shall be:

(1) To cooperate with school authorities in regard to the education of apprentices;

(2) In accordance with standards established by the Apprenticeship Council, to establish local standards of apprenticeship regarding schedule of operations, application of wage rates, working conditions for apprentices and the number of apprentices which shall be employed locally in the trade; and

(3) To adjust apprenticeship disputes.

The functions of a state trade apprenticeship committee shall be to assist in the development of statewide standards of apprenticeship *for all participating joint apprenticeship committees* and in the development of local standards and local committees.

§ 40.1-120. Definitions.–1. The term "apprenticeable occupation" shall mean a skilled trade having the following characteristics:

a. It is customarily learned in a practical way through a structured systematic program of on-the-job supervised work experience;

b. It is clearly identifiable and recognized throughout an industry;

c. It involves manual, mechanical or technical skills which require a minimum of 2,000 hours of on-the-job work experience of new apprenticeable trades not otherwise established; and

d. It requires related instruction to supplement the on-the-job work experience.

2. The term "apprentice" shall mean a person at least 16 years of age who is covered by a written agreement with an employer and approved by the Apprenticeship Council, which apprentice agreement provides for not less than 2,000 hours of reasonably continuous employment in new apprenticeable trades not otherwise established for such person, for his participation in an approved schedule of work experience through employment and the amount of related instruction required in the craft or trade.

3. "Joint Apprenticeship Committee" shall mean a group equally representative of management and labor representatives working under a bargaining agreement, established to carry out the administration of an apprenticeship training program.

4. "Sponsor" shall mean either an individual employer, a group of employers, an association or organization operating an apprenticeship program and in whose name the program is registered or approved.

5. "Employer" shall mean any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

§ 40.1-121. Requisites of apprentice agreement.–Every apprentice agreement entered into under this chapter shall contain:

(1) The names , *signatures and addresses* of the contracting parties.

(2) The date of birth of the apprentice.

(3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related or supplemental instruction.

(5) A statement setting forth a schedule of the processes in the trade or industry division in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required schooltime shall be compensated.

(7) A statement providing for a period of probation of

not less than 500 hours of employment and instruction extending over not less than 4 months, during which time the apprentice agreement shall be terminated by the Council at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the Council by mutual agreement of all parties thereto, or cancelled by the Council for good and sufficient reason.

~~(8) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may with the approval of the Council transfer such contract to any other employer, provided the apprentice consents and such other employer agrees to assume the obligations of the apprentice agreement.~~

(9) Such additional terms and conditions as may be prescribed or approved by the Council not inconsistent with the provisions of this chapter.

§ 40.1-122. Approval of agreement by Council; signing.–No apprentice agreement under this chapter shall be effective until approved by the Council. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 40.1-124, and by the apprentice, and, if the apprentice is a minor, by the minor's father or mother, provided, that if both father and mother be dead or legally incapable of giving consent or have abandoned their children, then by the guardian of the minor.

§ 40.1-123. Agreement binding after apprentice's majority.–When a minor enters into an apprentice agreement under this chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

§ 40.1-124. Agreement signed by organization of employers or of employees.–For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the Council be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the Council, to such employer or employers as shall sign a written agreement with the apprentice, and if the apprentice is a minor with his parent or guardian, as specified in § 40.1-122, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the agreement entered into between the apprentice and the employer association or employee organization.

§ 40.1-125. Commissioner to administer chapter.–The Commissioner, with the advice and guidance of the Council, shall be responsible for administering the provisions of this chapter.

§ 40.1-126. Operation and application of chapter.–Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees, setting up higher apprenticeship standards *regarding ratios of apprentices to journeymen, probationary periods or length of the program* . But none of the terms or provisions of this chapter shall apply to any person, firm, corporation or craft unless, until and only so long as such person, firm, corporation or craft voluntarily elects that the terms and provisions of this chapter shall apply.

NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Jane Chaffin, Virginia Code Commission, P.O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01
NOTICE OF COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE OF MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained from Jane Chaffin at the above address.

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **VR 460-04-8.4. Home and Community Based Services for Elderly and Disabled Individuals.**

Publication: 5:14 VA.R. 1721-1736 April 10, 1989

Change in comment period:

The Department of Medical Assistance Services is extending its comment period for the Home and Community Based Services for Elderly and Disabled Individuals. The comment period will be open through June 8, 1989, until 4:30 p.m. All comments on these proposed regulations are welcome and should be directed to Charlotte Carnes, Manager, Division of Medical Social Services, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219. The regulatory package is available by request from Victoria Simmons, Regulatory Coordinator, at the same address or at (804) 786-7933

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

June 27, 1989 - 9:30 a.m. – Open Meeting
Department for the Aging, 700 East Franklin Street, 10th Floor, Conference Room, Richmond, Virginia. ♿

Semi-annual meeting will include a report of recent program activities, and a discussion of the future direction of the program.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271/TDD ☎ , toll-free 1-800-552-3402/TDD ☎ or SCATS 225-2271

STATE AIR POLLUTION CONTROL BOARD

† **June 2, 1989 - 9 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ♿

A general meeting of the board.

† **June 9, 1989 - 9 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ♿

Formal hearing on demonstration by Avtex Fibers Front Royal Inc., that the board's Ambient Air Concentration for Carbon Disulfide is inappropriate and that the emissions from their facility present no endangerment to human health.

Contact: M.E. Lester, Director of Governmental Relations, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-5788 or SCATS 786-5788

DEPARTMENT OF AIR POLLUTION CONTROL

May 30, 1989 - 7:15 p.m. – Open Meeting
Handley Library Auditorium, Winchester, Virginia. ♿
(Interpreter for deaf provided if requested.)

A meeting to allow public comments on a permit application from Insulated Building Systems, Inc. to construct and operate an expanded polystyrene insulation products manufacturing/fabrication facility at the Stonewall Industrial Park, Winchester, Va. The meeting will be preceded by a presentation of facts concerning the proposed facility, which will commence at 6:45 p.m.

Contact: W. N. Millward, Northern Virginia Region, Department of Air Pollution Control, Springfield Towers, 6320 Augusta Drive, Suite 502, Springfield, VA 22150, telephone (703) 644-0311

ALCOHOLIC BEVERAGE CONTROL BOARD

May 22, 1989 - 9:30 a.m. – Open Meeting
June 12, 1989 - 9:30 a.m. – Open Meeting
June 26, 1989 - 9:30 a.m. – Open Meeting
Virginia Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Architects

June 2, 1989 - 1:30 p.m. – Open Meeting

Travelers Building, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from March 31, 1989, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, SCATS 367-8514 or toll-free 1-800-552-3016

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

May 25, 1989 - 5 p.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A regular board meeting.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

BOARD FOR BARBERS

May 22, 1989 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to (i) review enforcement cases; (ii) review applications; (iii) review correspondence; (iv) review regulations; (v) and consider routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

May 24, 1989 - 7 p.m. – Public Hearing
Rappahannock Community College, Warsaw Campus, Warsaw, Virginia

May 25, 1989 - 7 p.m. – Public Hearing
General District Court Room, Fredericksburg, Virginia

May 30, 1989 - 7 p.m. – Public Hearing
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to adopt regulations entitled: **VR 173-02-00. Chesapeake Bay Preservation Area Designation and Management Regulations.** This proposed regulation provides criteria for local government designation and management of Chesapeake Bay Preservation Areas as required by the Chesapeake Bay Preservation Act of 1988.

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Written comments may be submitted until 5 p.m., June 23, 1989.

Contact: Scott Crafton, Regulatory Assistance Coordinator, Chesapeake Bay Local Assistance Department, 701 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 371-7503 or SCATS 371-7503

LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

June 1, 1989 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia.

To meet requirements of Superfund Amendment and Reauthorization Act of 1989.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P. O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236

DEPARTMENT FOR CHILDREN

Children's Legislative Information Committee (CLIC)

May 25, 1989 - 10 a.m. – Open Meeting
Eighth Street Office Building, 805 East Broad Street, 11th Floor, Conference Room, Richmond, Virginia.

A regular business meeting open to the public for the purpose of reviewing legislative issues that pertain to addressing the policies, programs, and services affecting children.

Contact: Phyllis Moyer, Chair, Virginia Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-5507 or SCATS 786-5507

Consortium on Child Mental Health

June 7, 1989 - 9 a.m. – Open Meeting
Virginia Department for Children, Eighth Street Office Building, 11th Floor Conference Room, 805 East Broad Street, Richmond, Virginia.

A regular business meeting open to the public, followed by an executive session, for purposes of confidentiality, to review applications for funding of services to individuals.

Contact: Wenda Singer, Chair, Virginia Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone

(804) 786-2208 or SCATS 786-2208

COORDINATING COMMITTEE FOR INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

June 9, 1989 - 8:30 a.m. – Open Meeting
Interdepartmental Licensure and Certification, Office of the Coordinator, Tyler Building, 1603 Santa Rosa Drive, Suite 210, Richmond, Virginia.

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee.

Contact: John Allen, Coordinator, Interdepartmental Licensure and Certification, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124 or SCATS 662-7124

BOARD OF COMMERCE

June 5, 1989 - 10:30 a.m. – Public Hearing
Mary Washington College, Campus Center, College Avenue, Red Room, Fredericksburg, Virginia.

June 6, 1989 - 10:30 a.m. – Public Hearing
The Hotel Roanoke, 19 North Jefferson Street, Roanoke, Virginia.

A subcommittee of the board will conduct a public hearing on issues relating to the need to license and regulate the practice of "estheticians" in Virginia. The term refers to a person who engages in the commercial practice of using cosmetic preparations, makeups, antiseptics, tonics, lotions, creams or chemicals to massage, cleanse, stimulate, manipulate, exercise, beautify or groom the face, neck, arms and hands of other persons.

June 22, 1989 - 11 a.m. – Open Meeting
Travelers Building, 3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

An open business meeting of the board. Agenda may include (i) report of the director; (ii) discussions of results of public hearings that will have been held in connection with occupational studies on radon gas testers and mitigators, estheticians, and arborists; (iii) discussions of need to assign a subcommittee to review regulations for contractors; and (iv) discussion of need for subcommittee to assess probability that a regulatory program for real estate appraisers may become federally-mandated.

Contact: Alvin D. Whitley, Secretary to the Board, Department of Commerce, 3600 W. Broad St., 5th Fl., Office of the Director, Richmond, VA 23230, telephone (804) 367-8564, toll-free 1-800-552-3016 or SCATS 367-8519

BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

June 7, 1989 - 10:30 a.m. – Open Meeting
Virginia Beach Pavilion, Director's Conference Room, Virginia Beach, Virginia.

A meeting to discuss proposals from localities requesting matching grant funds from the board.

Contact: Jack E. Frye, Shoreline Programs Manager, P.O. Box 1024, Gloucester Point, VA 23062, telephone (804) 642-7121 or SCATS 842-7121

BOARD FOR CONTRACTORS

NOTE: CHANGE OF MEETING DATE
June 9, 1989 - 10 a.m. – Open Meeting
Travelers Building, 3600 West Broad Street, Fifth Floor, Board Room One, Richmond, Virginia.

The Board for Contractors will meet to conduct a formal hearing: Board for Contractors v. Robert A. Sumerlin, t/a Rocket Construction Co.

June 20, 1989 - 11 a.m. – Open Meeting
Sterling Public Library, 120 Enterprise Street, Sterling, Virginia

The Board for Contractors will meet to conduct a formal hearing:

Board for Contractors v. Independent Construction Company.

Contact: Gayle Eubank, Hearings Coordinator, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524

STATE BOARD OF EDUCATION

May 25, 1989 - 9 a.m. – Open Meeting
May 26, 1989 - 9 a.m. – Open Meeting
James Monroe Building, 101 North Fourteenth Street, Conference Room D & E, Richmond, Virginia. (Interpreter for deaf provided if requested)

A regularly scheduled meeting to be conducted according to items listed on the agenda. The agenda is available upon request. The public is reminded that the Board of Vocational Education may convene, if required.

Contact: Margaret Roberts, James Monroe Building, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540

STATE EDUCATION ASSISTANCE AUTHORITY

Board of Directors

June 13, 1989 - 10 a.m. – Open Meeting
State Education Assistance Authority, 6 North Sixth Street, Board Room, Richmond, Virginia.

A meeting to review agency budget, wage and salary scale and for other general business.

Contact: Lynette Hammond, Executive Assistant, 6 N. Sixth St., Suite 300, Richmond, VA 23219, telephone (804) 786-2035, toll-free 1-800-792-LOAN or SCATS 786-2035

STATE BOARD OF ELECTIONS

June 27, 1989 - 3 p.m. – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A meeting to ascertain the results of the June 13, 1989, Primary Elections.

Contact: Susan H. Fitz-Hugh, Secretary, 101 Ninth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6551, toll-free 1-800-552-8745

JOINT MEETING OF THE VIRGINIA EMERGENCY RESPONSE COUNCIL AND THE STATE HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

† **June 15, 1989 - 10 a.m.** – Open Meeting
Richmond Marriott, 500 East Broad Street, Richmond, Virginia

The business of the meeting will consist of a program status report; presentation of the Finance Subcommittee Report; and presentation of final recommendations of the Hazardous Materials Training Study Committee. Other business will consist of a program update and a report on the activities of the Virginia Emergency Response Council.

Contact: Addison E. Slayton, Jr., Department of Emergency Services, 310 Turner Rd., Richmond, VA 23225, telephone (804) 674-2497

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **June 22, 1989 - 1 p.m.** – Open Meeting
Hyatt Regency - Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia

1 p.m. - Special Study Committee to study the qualifications of managers of funeral establishments and the qualifications for the establishments in order to be licensed.

3 p.m. - General board meeting to include but not limited to elections of officers, and to discuss proposed regulations.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907

GLOUCESTER LOCAL EMERGENCY PLANNING COMMITTEE

May 24, 1989 - 6:30 p.m. – Open Meeting
Old Courthouse, Court Green, Gloucester, Virginia.

To provide an opportunity to review comments from the VERC on the final draft of the County Hazardous Materials Response Plan and to plan a table top exercise of the county plan.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

STATE HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

Finance Subcommittee

† **May 25, 1989 - 10 a.m.** – Open Meeting
308 Turner Road, Richmond, Virginia.

The committee will review proposed budgets for FY 89, and develop budget for the forthcoming biennium (FY 90-92).

Contact: James D. Holloway, 310 Turner Rd., Richmond, VA 23225, telephone (804) 674-2413

STATE BOARD OF HEALTH

May 22, 1989 - 9 a.m. – Open Meeting
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia

Regular meetings of the board.

Contact: Sarah H. Jenkins, Legislative Analyst/Secretary to the Board, Department of Health, Commissioner's Officer, 109 Governor St., Room 400, Richmond, VA 23219, telephone (804) 786-3561 or SCATS 786-3561

DEPARTMENT OF HEALTH (STATE BOARD OF)

May 23, 1989 - 10 a.m. – Public Hearing
Department of Health, Main Floor Conference Room, South

Wing, James Madison Building, 109 Governor Street, Richmond, Virginia.

June 22, 1989 - 2 p.m. – Public Hearing
Virginia Highlands Community College, Room 605, Abingdon, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Deparment of Health intends to adopt regulations entitled: **VR 355-33-02. Regulations Governing Licensure of Home Health Agencies and Hospices.** The proposed regulation prescribes minimum standards of organization and operation and procedures to be followed to secure required home health agency and hospice licensure from the Virginia Department of Health, Division of Licensure and Certification.

Statutory Authority: §§ 32.1-162.5 and 32.1-162.12 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., June 23, 1989.

Contact: Mary V. Francis, Director, Department of Health, Division of Licensure and Certification, 1013 James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 225-2081 or SCATS 225-3717

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

May 23, 1989 - 9:30 a.m. – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia.

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: Ann Y. McGee, Director, 805 E. Broad St., 9th Floor, Richmond, VA 23219, telephone (804) 786-6371 or SCATS 786-6371

HOPEWELL INDUSTRIAL SAFETY COUNCIL

† **June 6, 1989 - 9 a.m.** – Open Meeting
† **July 11, 1989 - 9 a.m.** – Open Meeting
† **August 1, 1989 - 9 a.m.** – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

June 16, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-01-0001. Rules and Regulations; VR 400-02-0001. Procedures, Instructions and Guidelines for Multi-Family Housing Developments; VR 400-02-0002. Procedures, Instructions and Guidelines for Single Family Housing Developments; VR 400-02-0003. Procedures, Instructions and Guidelines for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; VR 400-02-0004. Procedures, Instructions and Guidelines for Home Rehabilitation Loans; VR 400-02-0005. Procedures, Instructions and Guidelines for Energy Loans; VR 400-02-0006. Procedures, Instructions and Guidelines for Section 8 Existing Housing Assistance Payments Program.** The proposed amendments incorporate the authority's Procedures, Instructions and Guidelines into its Rules and Regulations.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Written comments may be submitted until June 16, 1989.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 13 S. 13th St., Richmond, VA 23219, telephone (804) 782-1986

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† **June 16, 1989** – Written comments may be submitted until this date.

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-01-0007. Procedures, Instructions and Guidelines for Section 8 Moderate Rehabilitation Program; VR 400-02-0008. Procedures, Instructions, and Guidelines for Virginia Rental Rehabilitation Program; VR 400-02-0009. Procedures, Instructions, and Guidelines for Virginia Homesteading Program; VR 400-02-0010. Procedures, Instructions and Guidelines for Mortgage Credit Certification Program; VR 400-02-0011. Procedures, Instructions and Guidelines for Allocation of Low-Income Housing Tax Credits; VR 400-02-0012. Procedures, Instructions and Guidelines for The Virginia Housing Fund; VR 400-02-0013. Procedures, Instructions and Guidelines for Multi-Family Developments for Mentally Disabled Persons; VR 400-02-0014. Procedures, Instructions, and Guidelines for the Acquisition of Multi-Family Housing Developments; VR 400-02-0015. Procedures, Instructions and Guidelines for The Virginia Senior Home Equity Account Program.** The proposed amendments

incorporate the authority's Procedures, Instructions and Guidelines into its Rules and Regulations.

STATEMENT

Purpose: To incorporate the authority's Procedures, Instructions and Guidelines into its Rules and Regulations.

Basis: Section 36-55.30:3 of the Code of Virginia.

Subject, substance and issues: Pursuant to its Rules and Regulations, the authority has previously adopted Procedures, Instructions and Guidelines to set forth the requirements and procedures for its programs. The use by the authority of both its Rules and Regulations and its Procedures, Instructions and Guidelines with respect to the authority's programs has, in certain instances, resulted in unnecessary duplication of provisions and may have created confusion as to applicable procedures and requirements.

The proposed amendments will adopt and incorporate the provisions of the authority's Procedures, Instructions and Guidelines into its Rules and Regulations. The amendments also include certain changes for clarification and technical correction of existing provisions in the Rules and Regulations and the Procedures, Instructions and Guidelines.

Impact: The proposed amendments will have no impact on the authority's programs. The authority does not expect that any significant costs will be incurred for the implementation of and compliance with the proposed amendments.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Written comments may be submitted until June 16, 1989.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 13 S. 13th St., Richmond, VA 23219, telephone (804) 782-1986

COUNCIL ON HUMAN RIGHTS

† **May 31, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Fourth Floor Conference Room West, Richmond, Virginia. ♿

Regularly scheduled council meeting.

Contact: Brenda H. Wynn, Secretary to Director, P.O. Box 717, Richmond, VA 23206, telephone (804) 225-2292, toll-free 1-800-633-5510/TDD ☎ or SCATS 225-2292

LIBRARY BOARD

† **June 20, 1989 - 9:30 a.m.** – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ♿

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332

COMMISSION ON LOCAL GOVERNMENT

May 22, 1989 - 3:30 p.m. – Open Meeting
Holiday Inn, Wytheville, Virginia

A regular meeting of the Commission on Local Government to consider such matters as may be presented.

May 23, 1989 - 11 a.m. – Open Meeting
Town Council Chambers, Wytheville Municipal Offices, 150 East Monroe Street, Wytheville, Virginia.

An oral presentation regarding the Town of Wytheville - Wythe County Settlement Agreement.

May 23, 1989 - 7:30 p.m. – Public Hearing
George Wythe High School, Auditorium, 1500 West Pine Street, Wytheville, Virginia.

A public hearing regarding the Town of Wytheville - Wythe County Settlement Agreement.

Contact: Barbara W. Bingham, Administrative Assistant, 702 Eighth St. Office Bldg., 805 E. Broad St., Richmond, VA 23219, telelphone (804) 786-6508

VIRGINIA LONG-TERM CARE COUNCIL

June 1, 1989 - 9:30 a.m. – Open Meeting
Ninth Street Office Building, Cabinet Conference Room, Room 622, Richmond, Virginia. ♿

Meeting of Virginia's Long-Term Care Council. Business pertains to developing increased long-term care services for disabled or chronically ill people of all ages.

Local Long-Term Care Coordinating Committees

June 5, 1989 - 9:30 a.m. – Open Meeting
Southwest Virginia, Johnson Memorial Hospital, Abingdon, Virginia. ♿

June 8, 1989 - 9:30 a.m. – Open Meeting
Virginia Health Care Association, Innsbrook, Richmond, Virginia. ♿

June 9, 1989 - 9:30 a.m. – Open Meeting

Tidewater, Riverside Hospital, Newport News, Virginia.

June 19, 1989 - 9:30 a.m. – Open Meeting
Virginia Baptist Hospital, Lynchburg, Virginia.

June 20, 1989 - 9:30 a.m. – Open Meeting
Northern Virginia, Fairfax Hospital Association, Fairfax, Virginia.

Regional meetings of the local long-term care coordinating committees provide the opportunity for coordination with the State Long-Term Care Council. Long-Term Care legislation, public guardianship and updates on local activities will be discussed.

Contact: Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD , toll-free 1-800-552-4464 or SCATS 225-2271

STATE LOTTERY BOARD

May 24, 1989 - 10 a.m. – Open Meeting
State Lottery Department, 2201 West Broad Street, Conference Room, Richmond, Virginia.

A regularly scheduled monthly meeting of the board. Business will be conducted according to items listed on the agenda which have not yet been determined.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

MARTINSVILLE - HENRY COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

June 8, 1989 - 9:30 a.m. – Open Meeting
Henry County Administration Building, Collinsville, Virginia.

Open meeting to carry out the provisions of the Superfund Amendments and Reauthorization Act of 1986.

Contact: Benny Summerlin, Public Safety Director, Henry County Administration Bldg., P.O. Box 7, Collinsville, VA 24078, telephone (703) 638-5311, ext. 256

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

May 25, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-2.6100. Eligibility Conditions and Requirements: State Plan for Medical Assistance Relating to Continued Eligibility for Pregnant Women.** The regulation proposes to continue Medicaid eligibility regardless of income changes.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., May 25, 1989, to Ann E. Cook, Director of Medical Social Services, 600 E. Broad St., Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone 786-7933

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NOTE: CHANGE OF COMMENT PERIOD
June 8, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.4. Home and Community Based Services for the Elderly and Disabled Individuals.** The purpose of the proposed regulation is to regulate the provision of home and community based long-term care services to elderly and physically disabled individuals who would otherwise require the level of care found only in intermediate or skilled care nursing facilities.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., June 8, 1989, to Charlotte Carnes, Manager, Division of Medical Social Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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June 28, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-02-191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care, VR 460-02-192. Methods and Standards for Establishing Payment Rates - Other Types of Care, and VR 460-02-194. Methods and Standards for Establishing Payment Rates - Long-Term Care.** These

proposed regulations regulate the reimbursement of nonenrolled service providers.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., June 28, 1989, to Malcolm O. Perkins, Division of Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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† **July 20, 1989** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **State Plan for Medical Assistance Relating to Preadmission Screening. VR 460-01-46. Utilization Control and VR 460-02-4.141. Criteria for Nursing Home Preadmission Screening: Medicaid Eligible Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.** These regulations contain the requirements for patient preadmission screening prior to nursing facility admittance.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

In 1982, § 32.1-327.2 of the Code of Virginia was revised to require preadmission screening for all individuals who will be eligible for community or institutional long-term care. (Revised in 1985 in § 32.1-330 of the Code of Virginia.)

The Omnibus Budget Reconciliation Act (OBRA) of 1987, Part 2, Subtitle C of Title IV added Section 1919 to the Social Security Act. Section 1919(e)(7) requires the states to have preadmission screening programs to identify individuals with mental illness or mental retardation, using criteria established by the Secretary of Health and Human Services. Specifically, Section 1919(b)(3)(F) prohibits a nursing facility from admitting any new resident who has mental illness or mental retardation (or a related condition), unless that individual has been determined by the State Mental Health or Mental Retardation Authority to require the level of services provided by a nursing facility. If so, the State Mental Health or Mental Retardation Authority will determine whether active treatment is required.

Purpose: The purpose of this proposal is to regulate the administration of Nursing Home Preadmission Screening.

Summary and analysis: Nursing Home Preadmission Screening was implemented in Virginia in 1977 for the purpose of ensuring that Medicaid-eligible individuals placed in nursing homes actually require nursing home care. Section 32.1-330 of the Code of Virginia states:

> Preadmission Screening required. All individuals who will be eligible for community or institutional long-term care services as defined in the State Plan for Medical Assistance shall be evaluated to determine their need for intermediate or skilled level of services as defined in that Plan. The department shall require a preadmission screening of all individuals who, at the time of application for admission to a licensed nursing home, are eligible for medical assistance or will become eligible within six months following admission. For community-based screening, the screening team shall consist of a nurse, social worker, and physician who are employees of the local Health department or the local Department of Social Services. For institutional screenings, the department shall contract with acute-care hospitals.

Preadmission screening determines if an individual needs nursing facility services and, where appropriate, authorizes either nursing home or community-based long-term care. Preadmission screening is the prior authorizing mechanism for Medicaid reimbursement of nursing home care and home and community-based care.

The Department of Medical Assistance Services obtained approval in 1982 for a Section 2176 Home and Community-Based Care Waiver to allow individuals who are determined to require nursing facility services an alternative to nursing home placement. This Home and Community Based Care Waiver contained one service option: Personal Care. The Department of Medical Assistance Services has requested approval from the Health Care Financing Administration to expand the available service options to include Adult Day Health Care and Respite Care as well as Personal Care.

The Omnibus Budget Reconciliation Act of 1987 required Virginia to expand its Nursing Home Preadmission Screening Program so that all individuals would be assessed to determine the need for nursing facility care and the need for evaluation for conditions of mental illness, mental retardation, and related conditions. Effective January 1, 1989, Virginia's Nursing Home

Preadmission Screening Program was expanded to meet these requirements and includes the participation of mental health professionals from the local Community Services Boards and a representative from the State Mental Health Authority (Department of Mental Health, Mental Retardation and Substance Abuse Services) in those cases where mental illness, mental retardation, or related disorders are a factor.

On November 30, 1988, emergency regulations entitled "Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals" were signed by the Governor. These regulations provided for the preadmission screening only of persons who were Medicaid eligible or anticipated becoming Medicaid eligible within 180 days of admission to the nursing facility.

Since that time, the Health Care Financing Administration (HCFA) has interpreted that Section 4211 of OBRA of 1987 requires, as a condition of nursing facilities' Medicaid participation, the preadmission screening of all persons admitted regardless of their Medicaid eligibility or potential eligibility. Moreover, nursing facilities must not admit, on or after January 1, 1989, any new resident who is mentally ill or mentally retarded who has not been determined to need nursing facility services, regardless of payment source. To comply with HCFA's recent interpretation of OBRA '87, a revised set of emergency regulations was submitted to supersede the previously gubernatorially approved emergency regulations.

Fiscal impact: This regulatory change will have no additional fiscal impact as the impact has been already experienced as a result of emergency regulation. Funds in the amount of $1,011,475 (GF $101,420 - NGF $910,055) were provided for 1989 and $2,856,305 (GF $435,470 - NGF $2,420,835) for 1990 in the Appropriation Act as amended by the 1989 General Assembly. The funds will provide for 5 FTE's and cover the costs of administration and services for expanded preadmission screening for all persons seeking nursing home placement and annual assessments mandated by OBRA '87.

Forms: One new form, the Respite Care Needs Assessment and Plan of Care form, is required to implement this proposed regulation. This form will be used by the nursing home preadmission screening committees when respite care services are considered in lieu of nursing home placement. The screening team plan of care form used currently by screening committees to develop a plan of care for personal care services has been revised to allow its use for both personal care and adult day health care.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., July 20, 1989, to Charlotte C. Carnes, Manager, Medical Social Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

BOARD OF MEDICINE

June 1, 1989 - 9 a.m. – Open Meeting
June 2, 1989 - 9 a.m. – Open Meeting
June 3, 1989 - 9 a.m. – Open Meeting
Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia. &

A formal hearing to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine in Virginia.

Contact: Eugenia Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

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July 7, 1989 - 2 p.m. – Public Hearing
Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia. &

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to adopt regulations entitled: **VR 465-04-01. Regulations Governing the Practice of Certified Respiratory Therapy Practitioners.** The purpose of this action is to amend and promulgate regulations effective December 2, 1985, as emergency regulations for voluntary certification of Respiratory Therapy Practitioners.

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

Written comments may be submitted until 2 p.m., July 7, 1989.

Contact: Eugenia Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

Ad Hoc Committee on Optometry

June 9, 1989 - 2 p.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. &

A meeting to review and discuss information obtained from visit to the Pennsylvania College of Optometry and discuss any other items which may come before this committee.

Executive Committee

June 9, 1989 - 9:30 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia.

A meeting to review and act upon disciplinary cases, (ii) review cases closed by Executive Director and (iii) discuss any other items which may come before the Executive Committee.

Informal Conference Committee

† **June 15, 1989 - 9:30 a.m.** – Open Meeting
Sheraton-Fredericksburg Resort and Conference Center, Route 3 and I-95, Fredericksburg, Virginia.

Informal conferences and formal hearings to inquire into allegations that certain practitioners may have violated laws and regulations governing to practice of medicine in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia.

Legislative Committee

June 23, 1989 - 10 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia.

A meeting to review and discuss proposed regulation which relates to misleading and deceptive advertising, petition for rulemaking relative to Straight Chiropractic Academic Standards Association, Inc. (SCASA), Special Purpose Examination (SPEX) and discuss any other items which may come before the Legislative Committee.

Advisory Board on Physical Therapy

June 16, 1989 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Board Room 2, 2nd Floor, Richmond, Virginia.

The purpose of this meeting is to (i) receive reports; (ii) review by-laws and procedural manuals; (iii) review regulations, specifically §§ 5.3 F, 7.2 and 8.1; and (iv) discuss any other items which may come before this advisory board.

Contact: Eugenia K. Dorson, Board Administrator, 1601 Rolling Hills Dr., Surry Building, 2nd Floor, Richmond, VA 23229, telephone (804) 662-9925

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

May 24, 1989 - 9:30 a.m. – Open Meeting
Cumberland Mountain Community Service Board, Cedar Bluff, Virginia.

A regular monthly meeting. The agenda will be published on May 17 and may be obtained by calling Jane Helfrich.

† **June 28, 1989 - 9:30 a.m.** – Open Meeting
Alexandria Community Services Board, Alexandria, Virginia.

A regular monthly meeting. The agenda will be published on June 21 and may be obtained by calling Jane Helfrich.

Contact: Jane V. Helfrich, State Board Staff, P.O. Box 1797, Richmond, Virginia 23214, telephone, (804) 786-3921

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† **June 2, 1989 - 9 a.m.** – Open Meeting
Richmond Community Services Board, 900 East Broad Street, 2nd Floor Conference Room, City Hall, Richmond, Virginia.

A regular meeting to discuss business relating to human rights issues. Agenda items are listed prior to meeting.

Contact: Elsie D. Little, State Human Rights Director, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988

BOARD OF NURSING

May 22, 1989 - 9 a.m. – Open Meeting
May 23, 1989 - 9 a.m. – Open Meeting
May 24, 1989 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. (Interpreter for deaf provided if requested)

A regular meeting to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement and the matters under the jurisdiction of the board. On Wednesday, May 24, 1989, at 8:30 a.m., the board will consider comments on intended regulatory action and propose new and amended regulations related to educational programs for and the registration of clinical nurse specialists.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601

Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560

June 20, 1989 - 9:30 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia.

Four formal hearings will be held to inquire into allegations that certain laws and regulations governing the practice of nursing in Virginia may have been violated.

Special Conference Committee

June 13, 1989 - 8:30 a.m. – Open Meeting
June 23, 1989 - 8:30 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. (Interpreter for deaf provided upon request)

A meeting to inquire into allegations that certain licensees may have violated laws and regulations governing the practice of nursing in Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (toll-free) 1-800-533-1560

BOARD OF NURSING HOME ADMINISTRATORS

† **June 1, 1989 - 8 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

National and State Examinations will be given to applicants for licensure for Nursing Home Administrators.

Board committee meetings.

† **June 2, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A regular board meeting. Proposed regulations on the subject of continuing education may be discussed.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

BOARD OF PHARMACY

June 10, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-1. Virginia Board of Pharmacy Regulations.** The purpose of this action is to increase fees for licenses.

Statutory Authority: §§ 54.1-2400 and 54.1-3007 of the Code of Virginia.

Written comments may be submitted until June 10, 1989.

Contact: Jack B. Carson, Executive Director, Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911

† **June 14, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia.

Board meeting and possible adoption of proposed regulations for physicians to sell drugs.

June 18, 1989 - 3:30 p.m. – Open Meeting
The Cavalier, Oceanfront at 42nd Street, Virginia Beach, Virginia

Drug law and board regulation review for graduating pharmacy students and interested pharmacists.

Contact: Jack B. Carson, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911

VIRGINIA PORK INDUSTRY BOARD

July 14, 1989 - 3 p.m. – Open Meeting
Blacksburg Marriott, Blacksburg, Virginia.

A meeting to consider (i) general business; (ii) committee reports; and (iii) election of officers.

Contact: John H. Parker, Program Director, 801 Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-7092 or SCATS 786-7092

BOARD OF PROFESSIONAL COUNSELORS

May 22, 1989 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Suite 200, Richmond, Virginia.

Scope of Practice Committee meeting to discuss the definition of professional counseling.

† **June 9, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A general board meeting to consider committee reports and response to correspondence; certification of the results of the board's oral examinations for professional counselor licensure and substance abuse

counselor certification; and regulatory review.

Contact: Stephanie A. Sivert, Executive Director, or Joyce D. Williams, Administrative Assisstant, Board of Professional Counselors, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9912

BOARD OF PSYCHOLOGY

May 24, 1989 - 1 p.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting of the oral examination committee to devise questions for the July oral examinations.

May 25, 1989 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting to (i) conduct general board business; (ii) discuss possible revisions to the regulations governing technical assistance and residency requirements for applicants from out-of-state; (iii) review proposals for possible legislation; and (iv) review applications for licensure, residency, and registration as Technical Assistants.

Contact: Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9912

VIRGINIA RACING COMMISSION

† **May 25, 1989 - 3:30 p.m.** – Open Meeting
American Legion Building, 213 Brook Avenue, South Hill, Virginia. ♿

The purpose of this meeting is to hear from the horse industry and interested citizens their perspective on the operation of horse racing in Virginia.

Contact: Pat Green, Office Manager, 1204 E. Main St., P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363 or SCATS 371-7363

RADIATION ADVISORY BOARD

June 2, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ♿

The Radiation Advisory Board will hold their annual meeting to discuss issues concerning the radiation control programs.

Contact: Leslie P. Foldesi, Director, Radiological Health, 109 Governor St., Richmond, VA 23219, telephone (804) 786-5932 or toll-free 1-800-468-0138

REAL ESTATE BOARD

June 2, 1989 - 9 a.m. – Open Meeting
Royce Hotel, 415 Richmond Road, Williamsburg, Virginia

A regular business meeting of the board. The agenda will consist of investigative cases (files) to be considered, files to be considered, matters relating to fair housing, property registration and licensing issues (e.g., reinstatement, eligibility requests).

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., 5th Fl., Richmond, VA 23230, telephone (804) 367-8552, toll-free 1-800-552-3016 or SCATS 367-8552

June 5, 1989 - 11 a.m. – Open Meeting
Department of Social Services, Pembroke Office Park, Pembroke IV, Suite 300, Conference Room A, Virginia Beach, Virginia.

The Real Estate Board will meet to conduct a formal hearing: Real Estate Board v. Eleanor MacRae

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524

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June 5, 1989 - 2 p.m. – Public Hearing
Location to be announced.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **VR 585-01-1. Virginia Real Estate Board Licensing Regulations.**

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

Written comments may be submitted until July 1, 1989.

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8552, toll-free 1-800-552-3016 or SCATS 367-8552

BOARD OF REHABILITATIVE SERVICES

† **May 26, 1989 - 9:30 a.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville, Virgina. ♿ (Interpreter for deaf provided if requested)

The board will review department reports including biennial budget development, elect new officers and conduct the regular business of the board.

Finance Committee

† **May 25, 1989 - 3 p.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will review department financial reports, proposed biennial budget and develop recommendations for board review and comments on budget development.

Legislation and Evaluation Committee

† **May 25, 1989 - 1 p.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will receive the sheltered workshop and facilities report and review legislative proposals for recommendation to the board.

Program Committee

† **May 25, 1989 - 2 p.m.** – Open Meeting
Woodrow Wilson Rehabilitation Center, Fishersville, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will review policies relating to grants and contracts and review public comments on proposed regulations.

Contact: James L. Hunter, Board Administrator, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-6446, toll-free 1-800-552-5019/TDD ☎ , SCATS 367-6446 or (804) 367-0280/TDD ☎

DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

July 12, 1989 - 2 p.m. – Public Hearing
William N. Neff Vocational Center, Route 8, Abingdon, Virginia

July 12, 1989 - 2 p.m. – Public Hearing
George Mason University School of Law, Metro Center Campus - Downtown Arlington, 3401 North Fairfax Drive, Arlington, Virginia

July 12, 1989 - 2 p.m. – Public Hearing
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Conference Room, Richmond, Virginia

July 12, 1989 - 6 p.m. – Public Hearing
Norfolk City Hall, City Hall Building, Council Chambers, 810 Union Street, 11th Floor, Norfolk, Virginia

Notice is hereby given that the Department of Rehabilitative Services will meet to consider the **State Plan Preprint for the State Vocational Rehabilitation Services Program and the State Supported Employment Services Program.** This State Plan outlines activities of the department under the State Vocational Rehabilitation Services program and the State Supported Employment Services Program covering Fiscal Years 1989, 1990 and 1991.

Statutory Authority: § 51.5-14 of the Code of Virginia.

Written comments may be submitted until July 8, 1989.

Contact: Robert J. Johnson, State Plan Coordinator, Department of Rehabilitative Services, 4901 Fitzhugh Ave., P.O. Box 11045, Richmond, VA 23230, telephone (804) 367-6379 or SCATS 367-6379

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July 12, 1989 - 2 p.m. – Public Hearing
William N. Neff Vocational Center, Abingdon, Virginia

July 12, 1989 - 6 p.m. – Public Hearing
Norfolk City Hall, Council Chambers, Norfolk, Virginia

July 12, 1989 - 2 p.m. – Public Hearing
George Mason School of Law, 3401 North Fairfax Drive, Arlington, Virginia

July 12, 1989 - 2 p.m. – Public Hearing
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Rehabilitative Services intends to amend regulations entitled: **VR 595-01-2. Provision of Vocational Rehabilitation Services.** The purpose is to amend certain portions to comply with federal regulations and to expand the service capabilities of the department.

Statutory Authority: § 51.5-5 of the Code of Virginia.

Written comments may be submitted until July 8, 1989, to Charles H. Merritt, Assistant Commissioner, Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia 23230.

Contact: James L. Hunter, Board Administrator, Department of Rehabilitative Services, P.O. Box 11045, 4901 Fitzhugh Ave., Richmond, VA 23230-1045, telephone (804) 367-6446, toll-free 1-800-552-5019/TDD ☎ or SCATS 367-6446

STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

May 31, 1989 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ♿

A meeting to hear and render a decision on all

appeals of denials of on-site sewage disposal system permits.

Contact: Deborah E. Randolph, 109 Governor St., Room 500, Richmond, VA 23219, telephone (804) 786-3559

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **May 25, 1989 - 10 a.m.** – Open Meeting
1000 Washington Building, Ninth Floor, A.V. Room, Richmond, Virginia. ♿

The authority will conduct its regular business meeting and will conduct a public hearing to consider Industrial Development Bond Applications received by the authority and for which public notice has appeared in the appropriate newspapers of general circulation.

Contact: Cathleen M. Surface, Virginia Small Business Financing Authority, 1000 Washington Bldg., Richmond, VA 23219, telephone (804) 786-3791

BOARD OF SOCIAL SERVICES

June 14, 1989 - 2 p.m. – Open Meeting
Department of Social Services, 8007 Discovery Drive, Blair Building, 2nd Floor Conference Room, Richmond, Virginia.

A work session and formal business meeting of the board.

If necessary, the board will also meet Thursday, June 15, 1989, at 9 a.m.

Contact: Phyllis Sisk, Administrative Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9236 or SCATS 662-9236

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

May 25, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-45-2. Child Protective Services Client Appeals.** The purpose of the proposed action is to establish regulations by which child protective services clients can appeal the decision made by a local department of social services regarding the disposition of a child protective services complaint.

Statutory Authority: §§ 63.1-25 and 63.1-248.6:1 of the Code of Virginia.

Written comments may be submitted until May 25, 1989, to Marvin Warren, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9081

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June 13, 1989 - 10 a.m. – Public Hearing
Department of Social Services, 8007 Discovery Drive, Blair Building, Conference Rooms A and B, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The proposed amendments affect the Crisis Assistance Component. The amendments will provide: (i) uniformity to the types of assistance available in each locality; (ii) greater client accessibility to the program statewide, and (iii) ensure all localities equal access to funds designated for crisis benefits.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until June 22, 1989, to Charlene H. Chapman, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217

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July 10, 1989 - 2 p.m. – Public Hearing
Department of Social Services, 8007 Discovery Drive, Conference Room A, Richmond, Virginia. ♿

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to adopt regulations entitled: **VR 615-46-01. Adult Protective Services.** The above regulation increases consistency of practice in adult protective services and establishes policy for disclosure of information by local departments of social services pursuant to § 63.1-55.4 of the Code of Virginia.

Statutory Authority: §§ 63.1-25, 63.1-55.1 and 63.1-55.4 of the Code of Virginia.

Written comments may be submitted until July 10, 1989, to Joy Duke, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Margaret Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr.,

Richmond, VA 23229-8699, telephone (804) 662-9182 or SCATS 662-9182

COMMONWEALTH TRANSPORTATION BOARD

† **June 15, 1989 - 10 a.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

DEPARTMENT OF TRANSPORTATION

† **June 14, 1989 - 9 a.m.** – Open Meeting
Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia. ♿ (Interpreter for deaf provided if requested)

Final hearing to receive comments on highway allocations for the coming year and on updating the six-year improvement program for the interstate, primary, and urban systems for the Bristol, Salem, Lynchburg and Staunton Districts.

† **June 15, 1989 - 9 a.m.** – Open Meeting
Virginia Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ♿

Final hearing to recieve comments on highway allocations for the coming year and on updating the six-year improvement program for the interstate, primary, and urban systems for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia Districts.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

BOARD OF VETERINARY MEDICINE

June 14, 1989 - 8:30 a.m. – Open Meeting
Holiday Inn - Koger South, 1021 Koger Center Boulevard, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

General board business, formal hearing, informal conferences, discussion of proposed changes in regulations.

Contact: Terri H. Behr, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9915

COMMISSION ON VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

NOTE: CHANGE IN HEARING DATE
May 30, 1989 - 9 a.m. – Public Hearing
Old City Hall, 1001 East Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on Virginia Alcohol Safety Action Program intends to adopt regulations entitled: **VR 647-01-01. Public Participation Guidelines.** Adoption of proposed guidelines which will encourage participation of citizens in the formation and development of regulatory proposals under the Virginia Administrative Process Act.

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

Written comments may be submitted until May 30, 1989.

Contact: Kim Morris, Executive Assistant, Commission on Virginia Alcohol Safety Action Program, 1001 E. Broad St., Box 28, Old City Hall Bldg., Richmond, VA 23219, telephone (804) 786-5895 or SCATS 786-5895

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NOTE: CHANGE IN HEARING DATE
May 30, 1989 - 9 a.m. – Public Hearing
Old City Hall, 1001 East Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on Virginia Alcohol Safety Action Program intends to amend regulations entitled: **Policy and Procedure Manual.** The Commission on VASAP is empowered to establish, amend and assure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the 26 local alcohol safety action programs. The Commission also oversees program plans, operations and performance and a system for allocating funds to cover deficits which may occur in the budget of local programs.

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

Written comments may be submitted until May 30, 1989. Individuals interested in speaking before the Commission on VASAP must submit written comments prior to April 22, 1989.

Contact: Kimberly A. Morris, Executive Assistant, Commission on VASAP, Old City Hall Bldg., 1001 E. Broad

St., Suite 245, Richmond, VA 23219, telephone (804) 786-5896

DEPARTMENT FOR THE VISUALLY HANDICAPPED

May 23, 1989 - 2 p.m. – Public Hearing
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Assembly Room, Richmond, Virginia

A meeting to seek public input in the development of the State Plan to Provide Vocational Rehabilitation Services by the Department for the Visually Handicapped.

Contact: James G. Taylor, 397 Azalea Ave., Richmond, VA 23227

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

May 23, 1989 - 1:30 p.m. – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia.

A regular monthly meeting to facilitate the timely delivery of appropriate services to handicapped children and youth in Virginia.

Contact: Glen R. Slonneger, Jr., Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140

DEPARTMENT OF WASTE MANAGEMENT

† **July 3, 1989 - 10 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room C, Richmond, Virginia.

A public meeting will be held for Amendment 10 to the Virginia Hazardous Waste Management Regulations to discuss the proposed changes in U.S. Environmental Protection Agency Regulations in solid and hazardous waste management. The regulated community, public, and interested persons are invited to attend.

Contact: Stuart T. Ashton, IV, Staff Specialist, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667

STATE WATER CONTROL BOARD

May 31, 1989 - 2 p.m. – Public Hearing
War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-13-02. Underground Storage Tanks; Technical Standards and Corrective Action Requirements.** The purpose of these proposed regulations is to control and manage underground storage tanks in order to prevent, control and cleanup releases of regulated substances to state waters.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.34:9 of the Code of Virginia.

Written comments may be submitted until 4 p.m., June 14, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Russell P. Ellison, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6350 or SCATS 367-6350

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May 30, 1989 - 2 p.m. – Public Hearing
War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-14-01. Permit Regulation.** The proposed amendments will revise the pretreatment program portions of the Permit Regulation to conform with federal regulations. In addition to comments on the proposed changes, the board seeks comments on requiring indirect industrial users to notify downstream users of violations of pretreatment permit limits. Comments are sought on the appropriateness of such an amendment and procedures for implementation.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., June 13, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: LaVern H. Corkran, Office of Engineering Application, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6313 or SCATS 367-6313

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May 23, 1989 - 2 p.m. – Public Hearing
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia

May 24, 1989 - 1 p.m. – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia

June 26, 1989 - 3 p.m. – Formal Hearing

NOTE: CHANGE OF LOCATION
School Administration Building, 2512 George Mason Drive, Prince Anne Courthouse, Board Room 131, Virginia Beach, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-01.11. Chlorine Standard and Policy and VR 680-21-07.2. Outstanding State Resource Waters.** The purpose of the proposed amendments is to adopt as permanent regulations VR 680-21-01.11 - Chlorine Standard and Policy and VR 680-21-07.2 - Outstanding State Resource Waters which were previously adopted as emergency regulations.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m., June 13, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Affected persons may petition to be a party to the formal hearing being held June 26, 1989, concerning any fact issues directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23(b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by May 10, 1989. The board seeks comments, orally at the hearing and in writing, on the proposed amendments including, but not limited to, any necessary revisions based on the issues raised to date.

Contact: Jean Gregory, Environmental Program Manager, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6985 or SCATS 367-6985

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May 24, 1989 - 7 p.m. – Public Hearing
Board of Supervisors Chamber, Administration Building, 120 North Main Street, Pearisburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-08. River Basin Section Tables: Water Quality Standards.** This proposed amendment to the River Basin Section Tables will revise the stream classification for Stony Creek, Section 1d New River Basin.

Statutory Authority: § 62.1-44.15(3) of the Code of Virginia.

Written comments may be submitted until 4 p.m., June 13, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Elleanore Moll, Environmental Program Planner, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6418 or SCATS 367-6418

June 5, 1989 - 7 p.m. – Public Hearing
Culpeper General District Courtroom, 135 West Cameron Street, 2nd Floor, Culpeper, Virginia

The State Water Control Board will hold a public hearing to receive comments on the proposed VPDES permit for South Wales Utility, Inc., Routes 229 and 211, Culpeper County the issuance or denial of the permit, and the effect of the proposed discharge on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, State Water Control Board, 2111 N. Hamilton St., P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829

† **June 26, 1989 - 9 a.m.** – Open Meeting
† **June 27, 1989 - 9 a.m.** – Open Meeting
School Administration Building, 2512 George Mason Drive, Princess Anne Courthouse, Board Room 131, Virginia Beach, Virginia

Regular quarterly meeting.

Contact: Doneva A. Dalton, State Water Control Board, 2111 N. Hamilton St., P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **May 25, 1989 - 8:30 a.m.** – Open Meeting
Travelers Building, 3600 West Broad Street, Conference Room 2, Richmond, Virginia.

An open meeting to discuss and adopt the proposed regulations.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, toll-free 1-800-552-5016 or SCATS 367-8534

COLLEGE OF WILLIAM AND MARY

Board of Visitors

June 23, 1989 - 8 a.m. – Open Meeting
College of William and Mary, Jamestown Road, Campus Center, Williamsburg, Virginia

A regularly scheduled meeting of the Board of Visitors of the College of William and Mary to act on those resolutions that are presented by the administration of William and Mary and Richard Bland College.

An informational release will be available four days

prior to the board meeting for those individuals or organizations who request it.

Contact: Office of University Relations, James Blair Hall, College of William and Mary, Room 308, Williamsburg, VA 23185, telephone (804) 253-4226

COUNCIL ON THE STATUS OF WOMEN

May 23, 1989 - 7 p.m. – Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia

A public meeting to receive information on the most important issues that affect women in Virginia, innovative ways communities have addressed specific issues, and suggestions of strategies to address specific issues in the future. The Council has identified many issues which affect Virginia's women including Aging, Child Abuse, Child Care, Divorce/Child Support, Employment, Estates, Family Life Education, Health, Housing, Leadership Development, Media/Pornography, Minority Women, Nontraditional Careers, Sexual Assault, Sex Equity in Insurance, Spouse Abuse, Reproductive Health, Teen Pregnancy, Welfare Reform and Women in Prison.

For more information on the public meeting or to register to speak contact the Council office. Written comments should be submitted to the Council Office by May 15, 1989.

May 24, 1989 - 9 a.m. – Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia

A regular meeting of the Council on the Status of Women to conduct general business and to receive reports from the council standing committees.

Contact: Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

VIRGINIA WORLD TRADE COUNCIL

May 22, 1989 - 3 p.m. – Open Meeting
May 23, 1989 - 9 a.m. – Open Meeting
Center for Innovative Technology, Herndon, Virginia

A meeting to discuss activities associated with the state government exporting projects.

Contact: Donna F. Wheeler, Secretary, Executive Offices, World Trade Center, Suite 6000, Norfolk, VA 23510, telephone (804) 683-2949 or toll-free 1-800-553-3170

CHRONOLOGICAL LIST

OPEN MEETINGS

May 22
Alcoholic Beverage Control Board
Barbers, Board for
Health, State Board of
Local Government, Commission on
Nursing, Board of
Professional Counselors, Board of
World Trade Council, Virginia

May 23
Health Services Cost Review Council, Virginia
Local Government, Commission on
Nursing, Board of
Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of Related Services to Handicapped Children
Women, Council on the Status of
World Trade Council, Virginia

May 24
Gloucester Local Emergency Planning Committee
Lottery Board, State
Mental Health, Mental Retardation and Substance Abuse Services Board, State
Nursing, Board of
Psychology, Board of
Women, Council on the Status of

May 25
Audiology and Speech Pathology, Board of
Children, Department for
- Children's Legislative Information Committee
Education, State Board of
† Hazardous Materials Emergency Response Advisory Council
- Finance Subcommittee
Psychology, Board of
† Racing Commission, Virginia
† Rehabilitative Services, Board of
- Finance Committee
- Legislation and Evaluation Committee
- Program Committee
† Small Business Financing Authority, Virginia
† Waterworks and Wastewater Works Operators, Board for

May 26
Education, State Board of
† Rehabilitative Services, Board of

May 30
Air Pollution Control, Department of

May 31
† Human Rights, Council on

Sewage Handling and Disposal Appeals Review Board, State

June 1
Chesterfield County, Local Emergency Planning Committee of
Long-Term Care Council, Virginia
Medicine, Board of
† Nursing Home Administrators, Board of

June 2
† Air Pollution Control Board, State
Architects, Board for
Medicine, Board of
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
† Nursing Home Administrators, Board of
Radiation Advisory Board
Real Estate Board

June 3
Medicine, Board of

June 5
Commerce, Board of
Long-Term Care Coordinating Committee
Real Estate Board

June 6
Commerce, Board of
† Hopewell Industrial Safety Council

June 7
Children, Department for
- Consortium on Child Mental Health
Conservation and Development of Public Beaches, Board on

June 8
Long-Term Care Coordinating Committee
Martinsville - Henry County Local Emergency Planning Committee

June 9
† Air Pollution Control Board, State
Children, Coordinating Committee for Interdepartmental Licensure and Certification of Residential Facilities for
Contractors, Board for
Long-Term Care Coordinating Committee
Medicine, Board of
- Ad Hoc Committee on Optometry
- Executive Committee
† Professional Counselors, Board of

June 12
Alcoholic Beverage Control Board

June 13
Education Assistance Authority, State
- Board of Directors
Nursing, Board of
- Special Conference Committee

June 14
† Pharmacy, Board of
Social Services, Board of
† Transportation, Department of
Veterinary Medicine, Board of

June 15
† Emergency Response Council, Virginia; Hazardous Materials Emergency Response Advisory Council, State
† Medicine, Board of
- Informal Conference Committee
† Transportation Board, Commonwealth
† Transportation, Department of

June 16
Medicine, Board of
- Advisory Board of Physical Therapy

June 18
Pharmacy, Board of

June 19
Long-Term Care Coordinating Committee

June 20
Contractors, Board for
† Library Board
Long-Term Care Coordinating Committee
Nursing, Board of

June 22
Commerce, Board of
† Funeral Directors and Embalmers, Board of

June 23
Medicine, Board of
- Legislative Committee
Nursing, Board of
- Special Conference Committee
William and Mary, College of
- Board of Visitors

June 26
Alcoholic Beverage Control Board
† Water Control Board, State

June 27
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
Elections, State Board of
† Water Control Board, State

June 28
† Mental Health, Mental Retardation and Substance Abuse Services Board, State

July 3
† Waste Management, Department of

July 11
† Hopewell Industrial Safety Council

July 14
Pork Industry Board, Virginia

August 1
† Hopewell Industrial Safety Council

PUBLIC HEARINGS

May 23
Health, Department of
Local Government, Commission on
Visually Handicapped, Department for the
Water Control Board, State

May 24
Chesapeake Bay Local Assistance Board
Water Control Board, State

May 25
Chesapeake Bay Local Assistance Board

May 30
Chesapeake Bay Local Assistance Board
Virginia Alcohol Safety Action Program, Commission on
Water Control Board, State

May 31
Water Control Board, State

June 5
Real Estate Board
Water Control Board, State

June 13
Social Services, Department of

June 22
Health, Department of

June 26
Water Control Board, State

July 10
Social Services, Department of

July 12
Rehabilitative Services, Department of