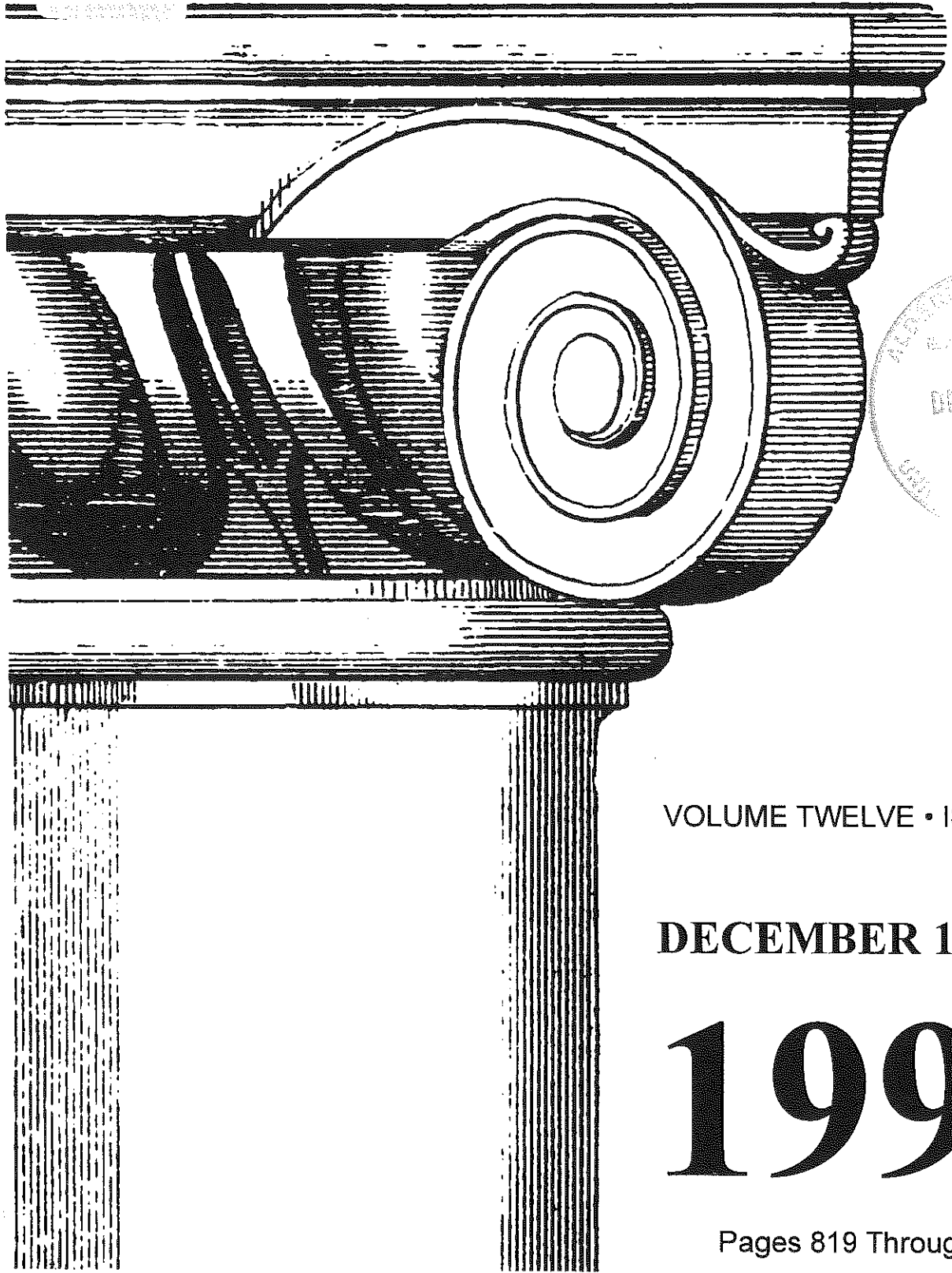


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THE VIRGINIA REGISTER

OF REGULATIONS

VA
DOC



VOLUME TWELVE • ISSUE SIX

DECEMBER 11, 1995

1995

Pages 819 Through 910

THE VIRGINIA REGISTER INFORMATION PAGE

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, is 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 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 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 the regulation becomes final.

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-month 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October, for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to *The Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of the Code of Virginia. Individual copies are available for \$4 each from the Registrar of Regulations.

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PUBLICATION DEADLINES AND SCHEDULES

December 1995 through September 1996

**Material Submitted
By Noon Wednesday**

Will Be Published On

Volume 12

November 21, 1995 (Tuesday)

December 11, 1995

December 6, 1995

December 25, 1995

INDEX 1 - Volume 12

January 1996

December 19, 1995 (Tuesday)

January 8, 1996

January 3, 1996

January 22, 1996

January 17, 1996

February 5, 1996

January 31, 1996

February 19, 1996

February 14, 1996

March 4, 1996

February 28, 1996

March 18, 1996

INDEX 2 - Volume 12

April 1996

March 13, 1996

April 1, 1996

March 27, 1996

April 15, 1996

April 10, 1996

April 29, 1996

April 24, 1996

May 13, 1996

May 8, 1996

May 27, 1996

May 22, 1996

June 10, 1996

June 5, 1996

June 24, 1996

INDEX 3 - Volume 12

July 1996

June 19, 1996

July 8, 1996

July 3, 1996

July 22, 1996

July 17, 1996

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July 31, 1996

August 19, 1996

August 14, 1996

September 2, 1996

August 28, 1996

September 16, 1996

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution, specifically operating permits and permit fees.** The purpose of the proposed action is to bring the regulations into compliance with Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and with federal regulations concerning state operating permit programs (40 CFR 70).

Public hearing plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: On November 12, 1993, the Commonwealth of Virginia submitted to the U.S. Environmental Protection Agency (EPA) the various elements of an operating permit program to meet the requirements of Title V of the new Clean Air Act. The program was based upon emergency operating permit and fee program regulations adopted by the State Air Pollution Control Board at its June 1993 meeting.

On December 5, 1994 (59 FR 62324), EPA disapproved the operating permit program submitted by the Commonwealth on November 12, 1993. This disapproval constitutes disapproval under § 502(d) of the Clean Air Act (CAA). As provided under § 502(d)(1) of the CAA, the Commonwealth has up to 180 days (July 5, 1996) from the date of EPA's notification of final disapproval for the Governor of Virginia to revise and resubmit the program. EPA disapproved the program on the basis that Virginia has not met the following requirements:

1. Pursuant to § 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) and 70.7(h), adequate provisions for public participation in the permit process, including statutory authority that meets the minimum threshold for judicial standing.
2. Pursuant to § 505(b)(3) of the CAA and 40 CFR 70.8(e), authority to prevent default issuance of permits.
3. Regulations that are permanent (emergency regulations expired on June 28, 1994).
4. Authority to issue permits to the proper universe of sources required by 40 CFR 70.
5. Regulations that meet the requirements of 40 CFR 70 ensuring issuance of permits that contain all applicable federal requirements and correctly delineate provisions only enforceable by the Commonwealth.

In addition to the above, EPA indicates in the notice that a number of other deficiencies (mostly regulatory) that are

explained in the Technical Support Document need to be corrected.

On January 9, 1995, the Commonwealth submitted revised regulations, adopted by the board on December 16, 1994, to correct the deficiencies noted in items 3, 4 and 5 above and those noted in the Technical Support Document. On that same day, the Commonwealth filed suit in federal court disputing the legal basis of item 1 above. On May 17, 1995, the Commonwealth submitted revised code provisions to correct the deficiency noted in item 2 above.

On September 19, 1995 (60 FR 48435), EPA once again proposed disapproval of the operating permit program. This includes disapproval of the regulation corrections submitted on January 9, 1995, and reaffirmation of disapproval of the original program submittal. If promulgated, this disapproval will constitute a disapproval under § 502(d) of the Clean Air Act (CAA). As provided under § 502(d)(1) of the CAA, the Commonwealth will have up to 180 days from the date of EPA's notification of final disapproval for the Governor of Virginia to revise and resubmit the program. EPA is proposing to disapprove this program on the grounds that it does not substantially meet the requirements of the CAA and of the implementing regulations at 40 CFR 70. EPA's primary objections to Virginia's program are as follows:

1. As required by § 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x), the program does not adequately afford persons the opportunity to seek judicial review of final permit decisions.
2. As required by § 502(b)(5) of the CAA and 40 CFR 70.3, the program does not assure that all sources required by the CAA to obtain Title V permits will be required to obtain such permits.
3. As required by § 502(b)(3) of the CAA and 40 CFR 70.9, the program does not contain an adequate provision for collection of Title V program fees.

In addition to the above, EPA indicates in the notice that a number of other deficiencies (mostly regulatory) that are explained in the Technical Support Document need to be corrected.

On October 16, 1995, the State Air Pollution Control Board approved an emergency regulation revision correcting the deficiencies noted by EPA. This revision was submitted to EPA on November 8, 1995. The emergency revision, however, has a life of only one year from the effective date of October 20, 1995. Upon the expiration of that year, it must be replaced by a permanent regulation revision developed through the Administrative Process Act procedures.

EPA concludes that it must disapprove Virginia's program and cannot merely grant it interim approval because the deficiencies are so significant that they prevent the entire program from substantially meeting the requirements of 40 CFR 70. EPA will not approve Virginia's operating permit program until the state amends § 10.1-1318 B of the Code of

Notices of Intended Regulatory Action

Virginia as well as the applicable provisions of Rules 8-5 and 8-6 in Regulations for the Control and Abatement of Air Pollution.

If Virginia's program does not have interim approval status by November 15, 1995, EPA must promulgate, administer, and enforce a federal permit program for Virginia on that date. In addition, if EPA finalizes its proposed disapproval, Virginia may become subject to sanctions under the CAA. The possible sanctions include the cessation of certain federal highway funding and a requirement that new or modified major sources achieve an emissions reduction-to-increases ratio of at least 2:1. EPA may apply the sanctions at any time after the final disapproval notice; however, EPA must apply one of these sanctions 18 months following the date of a final disapproval unless Virginia has submitted a revised program and EPA has determined that it corrects the noted deficiencies. A second sanction will apply 6 months after the first if the deficiencies have not been corrected. EPA will be required to apply sanctions against Virginia on July 5, 1996, unless by that date all deficiencies noted in the first disapproval have been corrected. Thus, to ensure that the sanctions are not imposed for regulatory deficiencies, new regulatory corrections need to be submitted by July 5, 1996. The emergency regulation revision temporarily meets this need.

The regulation revision is necessary because a failure to promulgate it will pose an imminent threat to public safety and possibly to public health because of the severe highway funds sanction that the federal government will impose in the Northern Virginia, Richmond, and Hampton Roads ozone nonattainment areas if the Commonwealth fails to correct the noted regulatory provisions before the sanction is implemented. Furthermore, if Virginia fails to submit a federally approvable program, EPA will assume responsibility for administering the program within Virginia, thus depriving the state of decision-making power as well as fee revenue to the disadvantage of Virginia's government, the regulated community, and the public.

Title V of the Act provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the EPA is required to develop regulations with specific operating permit requirements. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations.

The operating permits issued under this program will enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the department has an agreement with the owner through the permit that these requirements will be carried out. The permit enables the department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all

applicable state and federal regulations. The operating permit program provides that both the department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

An operating permit provides the mechanism for the department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the department.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being considered because it meets the stated purpose of the regulation amendments: to bring the regulations into compliance with federal law and regulation.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it does not necessarily meet the stated purpose of the regulation. Further, alternative regulatory changes could also go beyond the stated purpose by imposing requirements that may not be consistent with federal statutory and regulatory requirements.
3. Take no action to amend the regulations. This option is not being considered because it would not accomplish the goals of federal and state statutory and regulatory requirements or the stated purpose of the regulation. Furthermore, not taking any action would lead to federal sanctions, possible including the removal of federal highway funds and the imposition of a federal operating permit program on Virginia in which the permit fee revenues would go to the federal government rather than to Virginia.

Costs and benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable statutory requirements: The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Clean Air Act (the Act or CAA). Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. The federal regulations required to be developed under Title V, 40 CFR 70 (57 FR 32250, July 21, 1992), specify the minimum elements that must be included in state operating permit programs.

Notices of Intended Regulatory Action

CAA, § 502(a) and 40 CFR 70.3(a) require that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.
2. Major sources, defined as follows:
 - a. Any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
 - b. In ozone nonattainment areas designated as serious, any source emitting 50 tpy or more of VOCs or NO_x (in Virginia, the Northern Virginia area is designated serious); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy or more of VOCs or NO_x, respectively; and
 - c. Any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under § 112 of the Act.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under § 112 of the Act.
4. Any source subject to new source performance standards under § 111 of the Act.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, Part C of the Act or the nonattainment area new source review program under Title I, Part D of the Act.
6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

CAA, § 502(b) and 40 CFR 70.4(b) and other provisions of 40 CFR 70, as noted, set out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications. (40 CFR 70.5)
2. Monitoring and reporting requirements. (40 CFR 70.6(a)(3))
3. A permit fee system. (40 CFR 70.9)
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act. (40 CFR 70.7(a)(1))
6. Authority to issue permits for a fixed term, not to exceed five years. (40 CFR 70.6(a)(2))
7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan. (40 CFR 70.6(a)(1))

8. Authority to terminate, modify, or revoke and reissue permits for cause and a requirement to reopen permits in certain circumstances. (40 CFR 70.7)

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties. (40 CFR 70.11)

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion. (40 CFR 70.8(c) and (e))

11. Procedures for (i) expeditiously determining when applications are complete, (ii) processing applications, (iii) public notice, including offering an opportunity for public comment, and a hearing on applications, (iv) expeditious review of permit actions, and (v) state court review of the final permit action. (40 CFR 70.5 (a)(2) and 70.7 (h))

12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.

13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of § 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

CAA, § 503(b) and 40 CFR 70.5(c)(8) and (9) require that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

CAA, § 503(d) and 40 CFR 70.7(b) specify that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

CAA, § 503(e) and 40 CFR 70.4(b)(3)(viii) require that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection

Notices of Intended Regulatory Action

from disclosure under § 114 (c) of the Act can be submitted separately.

CAA, § 504 and 40 CFR 70.6(a)-(c) specify what is to be included in each operating permit issued under this program. These provisions require each permit to include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

CAA, § 504(b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

CAA, § 504(c) and 40 CFR 70.6(a)(3) require that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under § 504(b) and to any other requirements specified in federal regulation. Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

CAA, § 504(d) and 40 CFR 70.6(d) allow the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

CAA, § 504(e) and 40 CFR 70.6(e) allow the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

CAA, § 504(f) and 40 CFR 70.6(f) provide a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with CAA, § 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. The permit includes the applicable requirements of those provisions, or
2. The permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and

the permit includes the determination or a concise summary thereof.

CAA, § 503(c) and 40 CFR 70.5(a)(1) specify that all sources required to be permitted under a Title V program are required to submit an application within twelve months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

CAA, § 505(a) and 40 CFR 70.8(a) require the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, CAA, § 505(a) and 40 CFR 70.8(b) also require the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. CAA, § 505(b) and 40 CFR 70.8(c) provide for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under § 505(d) and 40 CFR 70.8(a)(2), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. CAA, § 505(e) and 40 CFR 70.7(g) allow the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on January 11, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413, FAX (804) 762-4510 or (804) 762-4021/TDD ☎

VA.R. Doc. No. R96-123; Filed November 21, 1995, 4:46 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board

Notices of Intended Regulatory Action

intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution, specifically technical documents incorporated by reference (Appendix M).** The purpose of the proposed action is to amend the regulations to incorporate the latest edition of referenced technical documents.

Public meeting: A public meeting will be held by the department in House Room One, State Capitol Building, Capitol Square, Richmond, Virginia, at 10 a.m. on December 13, 1995, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Public hearing plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The amendments are needed because the regulations must be current and timely, which means that the technical documents incorporated must be the most recent edition. In addition to meeting federal requirements for the provision of enforceable test methods which are acceptable to EPA, incorporation of these documents has many additional advantages to the public and to the state.

The amendments concern documents that are technical in nature and pertain to areas in which the agency has limited expertise or resources to conduct extensive research. For example, the "Flammable and Combustible Liquids Code," which is published by the National Fire Protection Association as an American National Standard contains important information that would not otherwise be readily determined by the state with its own devices.

In addition, the agency must ensure that its references to technical standards—for example, test methods—must be consistent with standards developed and accepted by the scientific and industrial communities. By keeping state requirements consistent with these standards, the state and the regulated community avoid conflict and confusion, and ensure technical accuracy. The Annual Book of ASTM Standards, produced by the American Society for Testing and Materials, is an example of this type of document.

Use of these standards is advantageous to industry. Most of the standards have been developed by industrial professional societies. Like the state, many industries do not have the wherewithal to do their own research and develop their own standards. Use of these standards assures convenience and consistency for their users, as well as a strong degree of confidence in their accuracy.

Relying on existing standards also saves the state time and financial resources by eliminating duplication of research. Finally, the regulations must reflect the most up-to-date technical information available to ensure that public health and welfare are protected.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to incorporate the most recent editions of technical documents.
2. Take no action to amend the regulations and continue using outdated references.

Costs and benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable statutory requirements: Section 110(a)(2)(B) of the federal Clean Air Act Amendments of 1990 (42 USC 7471) requires that the state implementation plan shall "provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to . . . monitor, compile, and analyze data on ambient air quality . . ." This law is implemented by the U.S. Environmental Protection Agency (EPA) through the Code of Federal Regulations, 40 CFR 51.212, which states that the plan must provide for "enforceable test methods for each emission limit specified in the plan."

To meet these requirements, the department has, where appropriate, incorporated by reference a series of primarily industry-generated test methods that reflect the most current technical information available, and that will enable the state to meet Clean Air Act requirements.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on December 14, 1995, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4426.

VA.R. Doc. No. R96-75; Filed October 25, 1995, 11:29 a.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0036 [8 VAC 20-370-10 et seq.] Regulations Governing Fees and Charges.** The purpose of the proposed action is to allow local school boards to charge a fee for students to take an optional summer administration of the Literacy Passport Test. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-6 of the Code of Virginia.

Public comments may be submitted until January 12, 1996.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, James Monroe Bldg., P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2025, FAX (804) 225-2053 or (804) 225-2300, toll-free 1-800-292-3820, or (804) 786-8389/TDD ☎

VA.R. Doc. No. R96-121; Filed November 21, 1995, 11:36 a.m.

Notices of Intended Regulatory Action

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to consider promulgating regulations entitled: **VR 365-01-3 [18 VAC 75-30-10 et seq.] Regulations Governing Standards for Dietitians and Nutritionists**. The purpose of the proposed action is to establish minimum requisite education, training, and experience appropriate for a person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2503 and 54.1-2731 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (304) 662-9919, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-83; Filed November 2, 1995, 12:53 p.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-2 [13 VAC 5-20-10 et seq.] Virginia Certification Standards**. The purpose of the proposed action is to amend the regulation by deleting unnecessary text and making the regulation more easily understandable. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 27-97, 36-98.3, and 36-137(6) of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-94; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-6 [13 VAC 5-50-10 et seq.] Virginia Statewide Fire Prevention Code/1993**. The purpose of the proposed action is to amend the regulation regarding

blasting, qualifications of fire officials, Virginia public building regulations and liquefied petroleum gas. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 27-97 and 36-137(6) of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-92; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21 [13 VAC 5-60-10 et seq.] Virginia Uniform Statewide Building Code - Volume I - New Construction Code/1993**. The purpose of the proposed action is to amend the regulation regarding swimming pools and storage magazines. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-93; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-22 [13 VAC 5-70-10 et seq.] Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1993**. The purpose of the proposed action is to establish standards for automatic sprinkler systems in hospitals regardless of when such facilities were constructed. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-99.9:1 of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-91; Filed November 6, 1995, 2:15 p.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-101 [13 VAC 5-110-10 et seq.] Enterprise Zone Program**. The purpose of the proposed action is to amend the Enterprise Zone Programs regulations to implement new incentives and provisions provided in 1995 legislative action. Such incentives are intended to stimulate new job creation and private investment in designated distressed enterprise zones. Amendments will also implement greater flexibility for businesses in qualifying for the use of these incentives. Amendments reflect an increased number of zones statewide and greater flexibility for localities to have multiple zones. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Public comments may be submitted until December 13, 1995.

Contact: Shea Hollifield, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219, telephone (804) 371-7030, FAX (804) 371-7093 or (804) 371-7089/TDD ☎

VA.R. Doc. No. R96-76; Filed October 25, 1995, 2:57 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

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 consider amending regulations entitled: **VR 460-03-3.1100 [12 VAC 30-50-100 through 12 VAC 30-50-310] Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A and B) and VR 460-02-4.1920 [12 VAC 30-80-10 et seq.] Methods and Standards for Establishing Payment Rates -- Other Types of Care (Attachment 4.19-B)**. The purpose of the proposed action is to implement savings to the Medicaid Program by covering the less expensive over-the-counter alternative medications as therapeutic alternatives to more expensive legend drugs. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 27, 1995, to David Shepherd, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R96-81; Filed October 31, 1995, 3:53 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider repealing regulations entitled: **VR 465-10-01 [18 VAC 85-100-10 et seq.] Regulations Governing the Practice of Radiologic Technologists**. The purpose of the proposed action is to repeal current regulations for the certification of radiologic technologists to replace with regulations for licensure by January 1, 1997, in accordance with statutory mandate. The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9903, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-84; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider promulgating regulations entitled: **VR 465-10-01:1 [18 VAC 85-101-10 et seq.] Regulations Governing the Practice of Radiologic Technologists**. The purpose of the proposed action is to establish requirements for licensure to practice as a radiologic technologist by January 1, 1997, in accordance with statutory mandate. The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-85; Filed November 2, 1995, 12:53 p.m.

STATE MILK COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Milk Commission intends to consider amending regulations entitled: **VR 475-02-01 [2 VAC 15-10-10 et seq.] Public Participation Guidelines**. The purpose of the proposed action is to amend regulations to comply with style, form and format recommended by the Registrar of Regulations to provide consistency and

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uniformity, in general, with public participation guidelines utilized by other state agencies. This action is consistent with the regulatory analysis performed pursuant to Executive Order 15(94). The commission has formed an ad-hoc advisory committee to draft amendments to the regulations. The committee desires to solicit public comment, oral and written, to assist in drafting amendments. The committee will welcome oral comments at its first scheduled meeting on January 17, 1996. Further, information concerning the time and location of the meeting may be obtained from Edward C. Wilson, Jr. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Public comments may be submitted until January 15, 1996.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or FAX (804) 786-3779.

VA.R. Doc. No. R96-78; Filed October 26, 1995, 1:26 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Milk Commission intends to consider amending regulations entitled: **VR 475-02-02 [2 VAC 15-20-10 et seq.] Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.** The purpose of the proposed action is to amend §§ 1, 2, 3, 5, 6, 9, 10, 11, 12 and 13 of VR 475-02-02 to achieve regulatory control in the least intrusive manner, providing for the protection of the safety and welfare of Virginians as mandated by law, and for the efficient administration of the regulations. This action is consistent with the regulatory analysis performed pursuant to Executive Order 15(94). The commission has formed an ad-hoc advisory committee to draft amendments to the regulations. The committee will welcome oral comments at its first scheduled meeting on January 17, 1996. Further, information concerning the time and location of the meeting may be obtained from Edward C. Wilson, Jr. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Public comments may be submitted until January 15, 1996.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or FAX (804) 786-3779.

VA.R. Doc. No. R96-79; Filed October 26, 1995, 1:26 p.m.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-02 [18 VAC 115-20-10 et seq.] Regulations Governing the Practice of Professional Counselors.** The purpose of the proposed action is to consider a reduction in some of its fees in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-86; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-03 [18 VAC 115-30-10 et seq.] Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to consider a reduction in some of its fees in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-111; Filed November 14, 1995, 3:54 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-04 [18 VAC 115-40-10 et seq.] Regulations Governing the Practice of Rehabilitation Providers.** The purpose of the proposed action is to establish educational criteria and standards for

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the licensure of rehabilitation providers as required by the 1994 Acts of the Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-82; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider promulgating regulations entitled: **VR 560-01-05 [18 VAC 115-50-10 et seq.] Regulations Governing the Licensure of Marriage and Family Therapists.** The purpose of the proposed action is to establish regulations for licensure of marriage and family therapists in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-87; Filed November 2, 1995, 12:53 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled: **VR 620-01-2 [18 VAC 140-20-10 et seq.] Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to consider a reduction in fees in order to maintain revenues consistent with expenditures. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-89; Filed November 2, 1995, 12:53 p.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled: **VR 645-01-1 [18 VAC 150-20-10 et seq.] Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to establish requirements for continuing education for licensure renewal as mandated by Acts of the 1995 General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-88; Filed November 2, 1995, 12:54 p.m.

VIRGINIA RACING COMMISSION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider promulgating regulations entitled: **11 VAC 10-180-10 et seq. Medication.** The purpose of the proposed action is to prescribe the circumstances and procedures under which furosemide and phenylbutazone may be administered to racehorses and the circumstances and procedures under which all other medications will be prohibited. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until January 16, 1996.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. R96-120; Filed November 21, 1995, 8:54 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

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 consider repealing regulations entitled: **VR 680-14-07 [9 VAC 25-90-10 et seq.] Oil Discharge Contingency Plans and Administrative Fees for Approval.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into new regulations (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements, and

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VR 680-14-08:1, Tank Vessel Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] and VR 680-14-08:1 [9 VAC 25-105-10 et seq.]). The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-100; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

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 consider promulgating regulations entitled: **VR 680-14-07:1 [9 VAC 25-95-10 et seq.] Facility and Aboveground Storage Tank Requirements**. The purpose of the proposed action is to adopt a new regulation which combines the necessary requirements for facilities and aboveground storage tanks into a single regulation in order to provide a clearly written and understandable regulation that can be implemented more efficiently. Combining VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13 will aid DEQ's efforts to streamline government services, provide uniformity in regulation, eliminate duplication and increase performance and efficiency. The action is also necessary (i) to consider providing operators with a coordinated federal/state approach by acceptance of the federally approved response plans and (ii) to provide regulatory relief and variance options to those facilities and oil products addressed in the 1994 amendments to state law.

Need: The regulations protect the health and safety of the citizens within the Commonwealth and the protection of the environment. This regulatory action is necessary to coordinate the implementation of these regulations and to eliminate confusion as to applicability of each regulation. For instance, definitions found in § 62.1-44.34:14 were added and modified as additional legislation was developed thereby causing definitions to be fragmented among the regulations.

Combining the four regulations into two will provide more clearly written and understandable regulations that can be implemented more efficiently. The recent promulgation of final federal tank vessel and facility regulations by the U.S. Coast Guard (USCG) and Environmental Protection Agency (EPA) allows the DEQ to develop a coordinated approach for planning and emergency response efforts within state waters.

Subject Matter and Intent: Currently four regulations (VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13) apply to facilities located in the Commonwealth that have an aboveground storage capacity of 25,000 gallons or more of oil and tank vessels. Each regulation was developed as a result of separate statutory changes and with each statutory amendment, the definitions of Article 11 (§ 62.1-44.34:14 et seq.) were modified. For example, a facility may be subject

to the Oil Discharge Contingency Plan (ODCP) regulations and not subject to the pollution prevention requirements. Inconsistencies between the regulations can be eliminated by this proposal, resulting in a more efficient and understandable regulation for preventing or responding to a discharge of oil.

In addition, the DEQ has reviewed final tank vessel and facility response plan regulations implementing the provisions of the federal Oil Pollution Act of 1990 and found them to be compatible with the ODCP requirements of VR 680-14-07. The EPA facility regulations will not be applicable to the vast majority of facilities subject to the DEQ ODCP regulations. To better facilitate the one plan concept, DEQ will evaluate and take the necessary steps to accept USCG and EPA approved response plans either wholly or with state specific information added. Reevaluation of the administrative fee for approval will also be undertaken.

Section 62.1-44.34:15.1 of the State Water Control Law was amended to exempt certain ASTs located at facilities not engaged in the resale of oil from inventory control and testing for significant inventory variations requirements. Section 62.1-44.34:15.1.5 was added to enable the board to establish criteria for granting variances from the AST Pollution Prevention Requirements (VR 680-14-13) for facilities not engaged in the resale of oil.

In addition, § 62.1-44.34:17 was amended to provide that facilities not engaged in the resale of oil shall not be subject to § 62.1-44.34:15.1 until July 1, 1995 (changed until variance requirements are promulgated) and ASTs with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored be exempt from any requirements of § 62.1-44.34:15.1. In addition, the amendment provides that the definition of oil, for the purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16 and for any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure.

Estimated Impacts: All impacts associated with this intended regulatory action are expected to be beneficial to the regulated community as well as the DEQ. Consolidation of regulations within the AST program will enable the public, industry and the DEQ to better understand the impact of the regulations and to provide for options to be considered. Providing a coordinated spill response with the USCG and the EPA by accepting federally approved spill plans will demonstrate Virginia's concern for protecting the environment and eliminate duplication of regulatory requirements. The DEQ will require specific information to be submitted with the addition to demonstration of federal approvals. It is estimated that 450 AST facilities with approximately 2,500 ASTs will each save \$550 per year by not having to perform the inventory control or testing for variance requirements. Estimates are that the ability to grant variances will save approximately 100 facilities approximately \$1,000 per year. The extension of compliance is projected to affect 450 AST facilities with approximately 2,500 ASTs and will save each facility \$500 for the year extension. Exemption from pollution prevention requirements for heating oil ASTs of 5,000 gallons

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or less will save 750 AST facilities approximately \$500 per year per facility. The asphalt exemption will save 20 facilities statewide approximately \$10,000 per facility initially and \$1,000 per facility annually.

Alternatives: An alternative is to retain, unchanged, the existing separate regulations. This is not considered to be an efficient alternative. The proposed amendment to combine the four regulations into two is the least burdensome and intrusive alternative available.

Having to determine individual applicability of the regulations is counterproductive and not in the best interest of the DEQ or the regulated community. It is confusing at best and difficult for staff to coordinate compliance efforts. Additionally, having several response plans on a tank vessel or at a facility often leads to confusion of responsibility and therefore an ineffective response.

The 1994 statutory amendments to § 62.1-44.34:15.1 provided that facilities not engaged in the resale of oil should not be subject to VR 680-14-13 until July 1, 1995 (the new date is until variance provisions are promulgated); that specific ASTs located at these facilities should not be subject to inventory control; and, that these facility operators should be able to request variances to VR 680-14-13 based on established criteria. This requirement is mandated by statute and provides a beneficial extension of the compliance date as well as enables DEQ to evaluate evolving technologies for acceptance within the regulation.

Comments: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on this intended regulatory action and on the costs and benefits of the stated alternatives as well as other alternatives. To be considered, comments should be directed to Mr. David Ormes, at the address below and should be received by 4 p.m. on Wednesday, January 17, 1996.

Public Meetings: Public meetings will be held on Monday, January 8, 1996, at 7 p.m. at the Virginia War Memorial Auditorium, 621 S. Belvidere Street, Richmond, and on Wednesday, January 10, 1996, at 7 p.m. in the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke.

Accessibility to Persons with Disabilities: The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Mr. David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, or by telephone at (804) 762-4263 (effective 12/1/95 - 698-4263) or TDD (804) 762-4021 (effective 12/1/95 - 698-4021). Persons needing interpreter services for the deaf must notify Mr. Ormes no later than Wednesday, December 27, 1995.

Advisory Committee/Group: All legal requirements related to public participation and all public participation guidelines will be strictly followed. An ad hoc advisory group will be convened to provide input to the department regarding the content of the proposed regulation and to ensure that the citizens have reasonable access and opportunity to present their comments and concerns. The ad hoc group may be composed of representatives from state, federal and local agencies; industry, manufacturers, facility and tank vessel owners/operators, environmental groups and the public. This

group will meet at least twice during the regulation development.

The DEQ intends to hold at least one public hearing (informational proceeding) on the proposed regulation after it is published in the Register of Regulations. The public hearing will be convened by a member of the board. The DEQ does not intend to hold a formal hearing (evidentiary) on the proposed regulation after the proposal is published in the Register of Regulations.

Impact on Family Formation, Stability and Autonomy: DEQ will consider the impact of the regulatory actions on family formation, stability and autonomy during the formulation of proposals. However, it is not anticipated that these regulations will have a direct impact on families. There may be positive indirect impacts in that the proposals will result in regulatory efficiency, thus promoting job retention and economic growth.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-102; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

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 consider repealing regulations entitled: **VR 680-14-08 [9 VAC 25-100-10 et seq.] Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-08:1, Tank Vessel Requirements). (See notice regarding VR 680-14-08:1 [9 VAC 25-105-10 et seq.]) The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-99; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

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 consider promulgating regulations entitled: **VR 680-14-**

Notices of Intended Regulatory Action

08:1 [9 VAC 25-105-10 et seq.] Tank Vessel Requirements. The purpose of the proposed action is to adopt a new regulation which combines the necessary requirements of two existing tank vessel regulations (part of VR 680-14-07 and VR 680-14-08) and to evaluate acceptance of federally approved oil spill response plans and financial responsibility requirements. Combining VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13 will aid DEQ's efforts to streamline government services, provide uniformity in regulation, eliminate duplication and increase performance and efficiency. The action is also necessary (i) to consider providing operators with a coordinated federal/state approach by acceptance of the federally approved response plans and (ii) to provide regulatory relief and variance options to those facilities and oil products addressed in the 1994 amendments to state law.

Need: The regulations protect the health and safety of the citizens within the Commonwealth and the protection of the environment. This regulatory action is necessary to coordinate the implementation of these regulations and to eliminate confusion as to applicability of each regulation. For instance, definitions found in § 62.1-44.34:14 were added and modified as additional legislation was developed thereby causing definitions to be fragmented among the regulations.

Combining the four regulations into two will provide more clearly written and understandable regulations that can be implemented more efficiently. The recent promulgation of final federal tank vessel and facility regulations by the U.S. Coast Guard (USCG) and Environmental Protection Agency (EPA) allows the DEQ to develop a coordinated approach for planning and emergency response efforts within state waters.

Subject Matter and Intent: Currently four regulations (VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13) apply to facilities located in the Commonwealth that have an aboveground storage capacity of 25,000 gallons or more of oil and tank vessels. Each regulation was developed as a result of separate statutory changes and with each statutory amendment, the definitions of Article 11 (§ 62.1-44.34:14 et. seq.) were modified. For example, a facility may be subject to the Oil Discharge Contingency Plan (ODCP) regulations and not subject to the pollution prevention requirements. Inconsistencies between the regulations can be eliminated by this proposal, resulting in a more efficient and understandable regulation for preventing or responding to a discharge of oil.

In addition, the DEQ has reviewed final tank vessel and facility response plan regulations implementing the provisions of the federal Oil Pollution Act of 1990 and found them to be compatible with the ODCP requirements of VR 680-14-07. The EPA facility regulations will not be applicable to the vast majority of facilities subject to the DEQ ODCP regulations. To better facilitate the one plan concept, DEQ will evaluate and take the necessary steps to accept USCG and EPA approved response plans either wholly or with state specific information added. Reevaluation of the administrative fee for approval will also be undertaken.

Section 62.1-44.34:15.1 of the State Water Control Law was amended to exempt certain ASTs located at facilities not engaged in the resale of oil from inventory control and testing for significant inventory variations requirements. Section

62.1-44.34:15.1.5 was added to enable the board to establish criteria for granting variances from the AST Pollution Prevention Requirements (VR 680-14-13) for facilities not engaged in the resale of oil.

In addition, § 62.1-44.34:17 was amended to provide that facilities not engaged in the resale of oil shall not be subject to § 62.1-44.34:15.1 until July 1, 1995 (changed until variance requirements are promulgated) and ASTs with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored be exempt from any requirements of § 62.1-44.34:15.1. In addition, the amendment provides that the definition of oil, for the purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16 and for any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure.

Estimated Impacts: All impacts associated with this intended regulatory action are expected to be beneficial to the regulated community as well as the DEQ. Consolidation of regulations within the AST program will enable the public, industry and the DEQ to better understand the impact of the regulations and to provide for options to be considered. Providing a coordinated spill response with the USCG and the EPA by accepting federally approved spill plans will demonstrate Virginia's concern for protecting the environment and eliminate duplication of regulatory requirements. The DEQ will require specific information to be submitted with the addition to demonstration of federal approvals. It is estimated that 450 AST facilities with approximately 2,500 ASTs will each save \$550 per year by not having to perform the inventory control or testing for variance requirements. Estimates are that the ability to grant variances will save approximately 100 facilities approximately \$1,000 per year. The extension of compliance is projected to affect 450 AST facilities with approximately 2,500 ASTs and will save each facility \$500 for the year extension. Exemption from pollution prevention requirements for heating oil ASTs of 5,000 gallons or less will save 750 AST facilities approximately \$500 per year per facility. The asphalt exemption will save 20 facilities statewide approximately \$10,000 per facility initially and \$1,000 per facility annually.

Alternatives: An alternative is to retain, unchanged, the existing separate regulations. This is not considered to be an efficient alternative. The proposed amendment to combine the four regulations into two is the least burdensome and intrusive alternative available.

Having to determine individual applicability of the regulations is counterproductive and not in the best interest of the DEQ or the regulated community. It is confusing at best and difficult for staff to coordinate compliance efforts. Additionally, having several response plans on a tank vessel or at a facility often leads to confusion of responsibility and therefore an ineffective response.

The 1994 statutory amendments to § 62.1-44.34:15.1 provided that facilities not engaged in the resale of oil should not be subject to VR 680-14-13 until July 1, 1995 (the new date is until variance provisions are promulgated); that specific ASTs located at these facilities should not be subject

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to inventory control; and, that these facility operators should be able to request variances to VR 680-14-13 based on established criteria. This requirement is mandated by statute and provides a beneficial extension of the compliance date as well as enables DEQ to evaluate evolving technologies for acceptance within the regulation.

Comments: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on this intended regulatory action and on the costs and benefits of the stated alternatives as well as other alternatives. To be considered, comments should be directed to Mr. David Ormes, at the address below and should be received by 4 p.m. on Wednesday, January 17, 1996.

Public Meetings: Public meetings will be held on Monday, January 8, 1996, at 7 p.m. at the Virginia War Memorial Auditorium, 621 S. Belvidere Street, Richmond, and on Wednesday, January 10, 1996, at 7 p.m. in the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke.

Accessibility to Persons with Disabilities: The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Mr. David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, or by telephone at (804) 762-4263 (effective 12/1/95 - 698-4263) or TDD (804) 762-4021 (effective 12/1/95 - 698-4021). Persons needing interpreter services for the deaf must notify Mr. Ormes no later than Wednesday, December 27, 1995.

Advisory Committee/Group: All legal requirements related to public participation and all public participation guidelines will be strictly followed. An ad hoc advisory group will be convened to provide input to the department regarding the content of the proposed regulation and to ensure that the citizens have reasonable access and opportunity to present their comments and concerns. The ad hoc group may be composed of representatives from state, federal and local agencies; industry, manufacturers, facility and tank vessel owners/operators, environmental groups and the public. This group will meet at least twice during the regulation development.

The DEQ intends to hold at least one public hearing (informational proceeding) on the proposed regulation after it is published in the Register of Regulations. The public hearing will be convened by a member of the board. The DEQ does not intend to hold a formal hearing (evidentiary) on the proposed regulation after the proposal is published in the Register of Regulations.

Impact on Family Formation, Stability and Autonomy: DEQ will consider the impact of the regulatory actions on family formation, stability and autonomy during the formulation of proposals. However, it is not anticipated that these regulations will have a direct impact on families. There may be positive indirect impacts in that the proposals will result in regulatory efficiency, thus promoting job retention and economic growth.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-101; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

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 consider repealing regulations entitled: **VR 680-14-12 [9 VAC 25-130-10 et seq.] Facility and Aboveground Storage Tank Registration Requirements Regulation**. The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-98; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

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 consider repealing regulations entitled: **VR 680-14-13 [9 VAC 25-140-10 et seq.] Aboveground Storage Tanks Pollution Prevention**. The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-103; Filed November 8, 1995, 11:32 a.m.

FINAL REGULATIONS

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 regulation.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (BOARD OF)

Title of Regulation: [~~VR 470-04-04. 12 VAC 35-10-10 et seq.~~] **Public Participation Guidelines (REPEALED).**

Title of Regulation: [~~VR 470-04-04:1. 12 VAC 35-11-10 et seq.~~] **Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

Effective Date: January 10, 1996.

Summary:

The regulation (i) allows individuals to petition the department to develop new regulations or amend existing regulations; (ii) requires at least a 30-day period for public comment prior to filing proposed regulations; and (iii) requires notification of whether the agency intends to schedule public hearings on proposed regulations after publication in The Virginia Register of Regulations.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Marion Y. Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-7769.

12 VAC 35-11-10 et seq. Public Participation Guidelines.

[CHAPTER 11. PUBLIC PARTICIPATION GUIDELINES.]

PART I. STATEMENT OF PURPOSE.

[~~§ 4.1. 12 VAC 35-11-10.~~] *Purpose.*

The purpose of [these regulations this chapter] is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

PART II. MAILING LIST.

[~~§ 2.1. 12 VAC 35-11-20.~~] *Composition of the mailing list.*

A. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall maintain a list of

persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Department of Mental Health, Mental Retardation and Substance Abuse Services may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The Department of Mental Health, Mental Retardation and Substance Abuse Services may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

[~~§ 2.2. 12 VAC 35-11-30.~~] *Documents to be sent to persons or entities on the mailing list.*

Persons or entities on the mailing list described in [~~§ 2.1. 12 VAC 35-11-20~~] shall be mailed the following documents related to the promulgation of regulations:

- 1. A Notice of Intended Regulatory Action.*
- 2. A Notice of Comment Period.*
- 3. A copy of any final regulation adopted by the Department of Mental Health, Mental Retardation and Substance Abuse Services.*
- 4. A notice of soliciting comment on a final regulation when the regulatory process has been extended.*

PART III. PUBLIC PARTICIPATION PROCEDURES.

[~~§ 3.1. 12 VAC 35-11-40.~~] *Petition for rulemaking.*

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the Department of Mental Health, Mental Retardation and Substance Abuse Services to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

- 1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.*
- 2. The number and title of the regulation to be addressed.*

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the Department of Mental Health, Mental Retardation and Substance Abuse Services from receiving information from the public and proceeding on its own motion for rulemaking.

[~~§ 3-2.~~ 12 VAC 35-11-50.] Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The Notice of Intended Regulatory Action shall indicate whether the Department of Mental Health, Mental Retardation and Substance Abuse Services intends to hold a public hearing on the proposed regulation after it is published. If the Department of Mental Health, Mental Retardation and Substance Abuse Services does not intend to hold a public hearing, it shall state the reason in the Notice of Intended Regulatory Action.

C. The Notice of Intended Regulatory Action shall state that a public hearing will be scheduled, if, during the 30-day comment period, the Department of Mental Health, Mental Retardation and Substance Abuse Services receives requests for a hearing from at least 25 persons.

[~~§ 3-3.~~ 12 VAC 35-11-60.] Notice of Comment Period.

A. The Notice of Comment Period shall indicate that copies of the proposed regulation are available from the Department of Mental Health, Mental Retardation and Substance Abuse Services and may be requested in writing from the contact person specified in the Notice of Comment Period.

B. The Notice of Comment Period shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

[~~§ 3-4.~~ 12 VAC 35-11-70.] Notice of meeting.

A. For any meeting of the Department of Mental Health, Mental Retardation and Substance Abuse Services or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar for inclusion in The Virginia Register.

B. If the Department of Mental Health, Mental Retardation and Substance Abuse Services anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days

prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

[~~§ 3-5.~~ 12 VAC 35-11-80.] Public hearing on regulations.

The Department of Mental Health, Mental Retardation and Substance Abuse Services shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation, unless at a noticed meeting the Department of Mental Health, Mental Retardation and Substance Abuse Services determines that a hearing is not required.

PART IV.
ADVISORY COMMITTEES.

[~~§ 4-1.~~ 12 VAC 35-11-90.] Appointment of committees.

A. The Department of Mental Health, Mental Retardation and Substance Abuse Services may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. The Department of Mental Health, Mental Retardation and Substance Abuse Services may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the Department of Mental Health, Mental Retardation and Substance Abuse Services determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

[~~§ 4-2.~~ 12 VAC 35-11-100.] Limitation of service.

A. An advisory committee which has been appointed by the Department of Mental Health, Mental Retardation and Substance Abuse Services may be dissolved by the Department of Mental Health, Mental Retardation and Substance Abuse Services when:

1. There is no response to the Notice of Intended Regulatory Action, or
2. The Department of Mental Health, Mental Retardation and Substance Abuse Services determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the Department of Mental Health, Mental Retardation and Substance Abuse Services determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.
2. At the end of that extended term, the Department of Mental Health, Mental Retardation and Substance Abuse Services shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. No. R96-106; Filed November 9, 1995, 10:52 a.m.

Final Regulations

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: [~~VR 645-04-54~~ 22 VAC 40-25-10 et seq.] Auxiliary Grants Program: Levels of Care and Rate Setting.

Statutory Authority: §§ 63.1-25 and 63.1-25.1 of the Code of Virginia.

Effective Date: February 1, 1996.

Summary:

This regulation sets forth requirements for the administration of the Auxiliary Grants Program which include the process the Virginia Department of Social Services is to use in establishing auxiliary grant rates for adult care residences, the services to be included in that rate, and the requirement for an individual's evaluation by a case manager as a condition of eligibility for payment from the program.

The following substantive changes were made to the repropoed regulation (see 11:24 VA.R. 3912-3915 August 21, 1995):

1. *The definition of personal needs allowance was modified to state that it means an amount of money reserved for meeting minimal personal needs when computing the amount of the auxiliary grant.*

2. *Shampoo, toothpaste, toothbrush, and comb were deleted from items covered by the auxiliary grant rate.*

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

Agency Contact: Copies of the regulation may be obtained from Karen H. Cullen, Program Consultant, Department of Social Services, Division of Benefit Programs, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1722.

22 VAC 40-25-10 et seq. Auxiliary Grants Program: Levels of Care and Rate Setting.

[CHAPTER 25.

AUXILIARY GRANTS PROGRAM: LEVELS OF CARE AND RATE SETTING.]

[§-4. 22 VAC 40-25-10.] Definitions.

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

"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who

cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or any portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Applicant" means an adult currently residing or planning to reside in an adult care residence who has applied for financial assistance under the Auxiliary Grants Program.

"Approved rate" means a rate established by the Department of Social Services' Division of Financial Management for use by eligibility workers in local departments in determining Auxiliary Grants Program payments for eligible recipients.

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

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an adult care residence with an approved rate.

"Case manager" means an employee of a public human services agency having a contract with the Department of Medical Assistance Services to provide case management services and who is qualified to perform case management activities.

"Cost report" means Adult Care Residences Cost Report.

"Department" means the Virginia Department of Social Services.

"Minimum rate" means the rate used to determine eligible auxiliary grant recipient reimbursement prior to the establishment of the residence's approved rate.

"Newly licensed adult care residence" means a residence that has been licensed for 12 months or less and is submitting a cost report for the first time for the establishment of a rate in excess of the minimum rate.

"Nonoperating expense" means expenses incurred by the residence for activities other than those directly related to the care of residents.

"Nonoperating revenue" means income earned by the residence for activities other than those directly related to the care of residents.

"Operating costs" means the allowable expenses incurred by an adult care residence for activities directly related to the care of residents.

"Personal needs allowance" means an amount of money reserved for meeting [minimal] personal needs when computing the amount of the auxiliary grant.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services (DMAS) to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home and community-based waiver program including an independent physician contracting with DMAS to complete the uniform assessment instrument for residents of the adult care residence, or any hospital which has contracted with DMAS to perform nursing facility preadmission screening.

"Rate" means approved rate.

"Recipient" means an adult approved to receive financial assistance under the Auxiliary Grants Program when residing in an adult care residence with an approved rate.

"Residence" means an adult care residence.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes independent living facilities that voluntarily become licensed.

"Uniform assessment instrument" means the department-designated assessment form.

[§ 2. 22 VAC 40-25-20.] Assessment.

A. In order to receive payment from the Auxiliary Grants Program for care in an adult care residence, applicants shall have been assessed by a case manager or other qualified assessor using the uniform assessment instrument and determined to need residential living care or assisted living care.

B. In order to continue receiving payment from the Auxiliary Grants Program, recipients residing in adult care facilities on [the effective date of these regulations February 1, 1996,] shall have been assessed by a case manager or other qualified assessor no later than 12 months from [the effective date of these regulations February 1, 1996,] and determined to need residential care or assisted living care in an adult care residence. Provisions shall be made by the department in Auxiliary Grants Program policy for grandfathering in those recipients who do not meet the criteria for residential care.

C. As a condition of eligibility for the Auxiliary Grants Program, a uniform assessment instrument shall be completed on a recipient at least once every 12 months and a determination made that the individual needs residential or assisted living care in an adult care residence.

[§ 3. 22 VAC 40-25-30.] Basic services.

The rate established by the department for an adult care residence providing residential living care or assisted living care under the Auxiliary Grants Program shall cover the following services:

1. Room and board.
 - a. Provision of a furnished room (See [VR 615-22-02:4 22 VAC 40-71-10 et seq.]);
 - b. Housekeeping services based on the needs of the recipient;
 - c. Meals and snacks required by licensing regulations, including extra portions of food at mealtime and special diets;
 - d. Clean bed linens and towels as needed by the recipient and at least once a week.
2. Maintenance and care.
 - a. Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence;
 - b. Medication administration as required by licensing regulations including insulin injections;
 - c. Provision of generic personal toiletries including [shampoo, toothpaste, toothbrush, comb,] soap and toilet paper;
 - d. Minimal assistance with the following:
 - (1) Care of personal possessions;
 - (2) Care of funds if requested by recipient and residence policy allows this practice (See [VR 615-22-02:4 22 VAC 40-71-10 et seq.]);
 - (3) Use of the telephone;
 - (4) Arranging transportation;
 - (5) Obtaining necessary personal items and clothing;
 - (6) Making and keeping appointments;
 - (7) Correspondence.
 - e. Securing health care and transportation when needed for medical treatment;
 - f. Providing social and recreational activities as required by licensing regulations;
 - g. General supervision for safety.

[§ 4. 22 VAC 40-25-40.] Personal needs allowance.

A. The personal needs allowance for the recipient shall not be charged by the residence for any item or service not requested by the resident. The residence shall not require a resident or his representative to request any item or service as a condition of admission or continued stay. The residence

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must inform the resident or his representative requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be. The personal needs allowance is expected to cover the cost of the following categories of items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the adult care residence or if the recipient requests a specific type or brand of toiletries;
3. Personal comfort items including tobacco products, sodas, and snacks beyond those required by licensing regulations;
4. Barber and beauty shop services;
5. Over-the-counter medication, medical copayments and deductibles, insurance premiums;
6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;
7. Personal telephone, television, or radio;
8. Social events and entertainment offered outside the scope of the activities program;
9. Other items agreed upon by both parties except those listed in subsection B of this [~~section~~ regulation].

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);
2. Administration of accounts (bookkeeping, account statements);
3. Debts owed the residence for basic services as outlined by regulations;
4. Charges for laundry by the adult care residence which exceed \$10 per month.

[§-5. 22 VAC 40-25-50.] Establishment of rate.

A. Submission of a cost report to the department's Division of Financial Management, Bureau of Cost Accounting is required to establish a rate in excess of the minimum rate.

B. The rate shall be calculated based on operating cost data reported on the cost report. Total operating costs shall be reduced by any nonoperating revenue, less nonoperating expenses. If nonoperating expenses exceed nonoperating revenue, no adjustment is made. These costs are then adjusted in accordance with department policy to recognize operation changes, growth, and inflation. Based on the greater of actual filled bed days or 85% of bed capacity, a monthly rate per resident shall be calculated.

C. The established rate shall be the lesser of the calculated rate or the maximum authorized monthly rate established by state regulations as set forth in the Appropriations Act.

D. Rates shall be valid for 12 months unless the residence is required to submit a new cost report as a result of (i) significant operational changes as defined by department policy, or (ii) the residence changes ownership, or (iii) the residence changes location.

E. Newly licensed adult care residences shall operate for a minimum of 90 days prior to submission of a cost report for the purpose of establishing a rate. During the first 90 days of operation, the adult care residence's rate shall be the minimum rate. When cost reports are submitted no later than 60 days after the end of the first 90 days of operation, the effective date of the rate shall be made retroactive to the residence's date of licensure. When cost reports are submitted more than 150 days after licensure, the effective date of the rate shall be no later than the first day of the second month following receipt of the cost report by the department's Division of Financial Management.

F. Adult care residences that have been in licensed operation in excess of 12 months shall establish an initial approved rate by submitting a cost report for the preceding calendar year. The cost report shall be reviewed by the department's Division of Financial Management and the approved rate established. The approved rate shall be the lesser of the calculated rate or the maximum authorized rate established by state regulations as set forth in the Appropriations Act. The approved rate shall become effective no later than the first day of the second month following the month the cost report is received by the department's Division of Financial Management.

G. After the initial approved rate is established, cost reports shall be submitted annually to the department's Division of Financial Management. If a provider that has previously established a rate fails to submit a cost report, the rate for residential living care shall become the minimum rate at the end of the twelfth month from the date the last rate was set.

[§-6. 22 VAC 40-25-60.] Reimbursement.

Any moneys contributed toward the cost of care pending public pay eligibility determination shall be reimbursed to the recipient or contributing party by the adult care residence once eligibility for public pay is established and that payment received.

[§-7. 22 VAC 40-25-70.] Audits.

All financial information reported by an adult care residence on the cost report shall be reconcilable to the residence's general ledger system or similar records. All cost reports are subject to audit by the Department of Social Services. Financial information which is not reconcilable to the residence's general ledger or similar records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited, whichever is first.

V.A.R. Doc. No. R96-116; Filed November 20, 1995. 12:11 p.m.

Title of Regulation: VR 615-22-02 [22 VAC 40-70-10 et seq.] Standards and Regulations for Licensed Homes for Adults (REPEALED).

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Effective Date: February 1, 1996.

Summary:

The 1993 General Assembly enacted legislation which created levels of care in licensed homes for adults. This legislation also changed the term "homes for adults" to "adult care residences." Requirements for case management services for public pay residents and the administration of the Auxiliary Grant Program were also included in the legislation. Because of the many changes required by the statute and the desire to reorganize the licensing requirements, the Department of Social Services decided to repeal the existing licensing requirements for homes for adults. The regulation is being repealed concurrently with the promulgation of new licensing requirements for adult care residences.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Jahn Hady, Division of Licensing Programs, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, VA 23219, telephone (804) 692-2395.

VA.R. Doc. No. R96-118; Filed November 20, 1995, 1:09 p.m.

Title of Regulation: [~~VR 615-22-02-1~~ 22 VAC 40-71-10 et seq.] Standards and Regulations for Licensed Adult Care Residences.

Statutory Authority: §§ 63.1-25, 63.1-174 and 63.1-174.001 of the Code of Virginia.

Effective Date: February 1, 1996.

Summary:

The 1993 General Assembly enacted legislation (House Bill 2280) which created two levels of care in licensed homes for adults. This legislation also established the statutory basis for the prohibition of specific medical conditions. In addition, it changed the term "homes for adults" to "adult care residences." Requirements for assessment services for residents and the administration of the Auxiliary Grant Program were also included in the legislation. These requirements are addressed in separate regulations. This regulation specifies the licensure requirements for adult care residences. Sections addressed within the licensure regulation include personnel and staffing requirements; admission, retention and discharge policies; resident accommodations, care and related services; buildings and grounds; and additional requirements for assisted living facilities (the higher of the two levels of care).

An initial public comment period for this regulation was held between December 13, 1993, and February 11, 1994. In response to public comment, several revisions were made to the regulations. These revisions were summarized in the Virginia Register of August 21, 1995.

House Bill 450, enacted by the 1994 General Assembly, removed the requirement from the Code of Virginia that a staff person administering medication in an adult care residence be an agent authorized in writing by the physician to administer the drugs. The proposed licensure regulation was revised accordingly.

Continuing concerns by providers and advocates were brought before the 1995 General Assembly. As a result, Senate Bill 1010 was enacted which clarified and modified the law to resolve the concerns. Specifically, Senate Bill 1010 tied the level of staffing directly to the care needs of residents and allowed adult care residences to serve persons with more severe medical conditions. It also made some changes in regard to the uniform assessment instrument and the written assurance regarding meeting the resident's care needs. In addition House Bill 1960, also signed by the Governor, included a provision for accepting temporarily detained residents not involuntarily committed back into an adult care residence. The proposed licensure regulation was revised accordingly to address the changes mandated by the Code of Virginia.

This regulation was published in the August 21, 1995, Virginia Register for an additional 30-day public comment period.

The State Board of Social Services revised the licensure regulation taking into consideration the public comments received during the additional comment period. Changes made to the regulation in response to public comment are described below.

- 22 VAC 40-71-10. Added a definition of "building" for clarity. Revised the definitions of "case management" and "case manager" to match changes made in the Assessment in ACRs regulations.
- 22 VAC 40-71-80 D. Reworded to ensure that direct care staff must attend eight hours of training.
- 22 VAC 40-71-110 B. Added "a sworn disclosure statement" to the requirement that an original criminal record report be maintained for each staff member, as required by the Code of Virginia.
- 22 VAC 40-71-110 C and 22 VAC 40-71-150 L 8. Revised TB screening standards for staff and residents as recommended by the Virginia Department of Health.
- 22 VAC 40-71-130 C. An exception was added for clarity in determining when staff in a residence must be awake at night.
- 22 VAC 40-71-130 D. Deleted the requirement that staffing plans take into consideration vacant positions and staff absences.
- 22 VAC 40-71-170 A 1 b. Changed the qualifications of facility employees who may complete the Uniform

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Assessment Instrument (UAI) for private pay residents from having the knowledge, skills, and abilities of a case manager to having training on the UAI, and added a provision for approval of the UAI by the administrator or designee.

- 22 VAC 40-71-200. Deleted the requirement that shampoo, toothpaste, a toothbrush, and a comb be provided at no additional cost to auxiliary grant and general relief recipients.

- 22 VAC 40-71-270 E. Added a requirement that evidence of a resident's having been informed of his rights and responsibilities shall be filed in his record, as required by the Code of Virginia.

- 22 VAC 40-71-270. Added a requirement which states that the residence make available a copy of the rights and responsibilities of residents in an easily accessible place, and that the name and telephone number of the appropriate regional licensing supervisor, the telephone number of the Virginia Long-Term Care Ombudsman, and the telephone number of the Department for the Rights of Virginians with Disabilities be included, as required by the Code of Virginia.

- 22 VAC 40-71-380 E. Reworded the standard to reference the U.S. Department of Agriculture's Food Guide Pyramid as a source for a nutritional daily menu and deleted the specific references to foods and numbers of servings.

- 22 VAC 40-71-400 A. Added the word "dated" before the word "notation" in the second sentence.

- 22 VAC 40-71-400 D. Added a requirement that all medications shall be administered according to the physician's instructions.

- 22 VAC 40-71-400 F. Added the date the medication is given.

- 22 VAC 40-71-470. Eliminated the reference to physical, emotional and behavioral problems as medical symptoms and added "that warrant the use of restraints."

- 22 VAC 40-71-470 C 8 c. Added "and potential negative outcomes" after "explain the use of the restraint."

- 22 VAC 40-71-530 B 1 and 2. Rearranged wording for clarity.

- 22 VAC 40-71-560 A and 22 VAC 40-71-570 A. Changed "Office of State Fire Marshal" to "appropriate fire prevention official."

- 22 VAC 40-71-580 E. Revised the standard to add "...to comply with subdivision F 2."

- 22 VAC 40-71-580 F. Deleted "shall be timed" after fire drill and revised subdivision 2 as follows: "Practice in building evacuation procedures or if evacuation is not required other procedures as specified in the fire plan. This practice shall be timed."

- 22 VAC 40-71-610. Added a standard to require that privacy be provided for residents to use the telephone.

- 22 VAC 40-71-630 J. Revised to require that (i) the licensed health care professional shall be on site at least quarterly rather than monthly, (ii) the health care professional will be responsible for determining if more visits are needed, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition, (iii) the responsibilities of the professional will be taken care of at least quarterly while on site, and (iv) direct observation of every resident will be limited to those whose care needs are equivalent to the intensive assisted living criteria.

- 22 VAC 40-71-640. Added "if applicable for care or services" to obtaining information on mental health, mental retardation and substance abuse history.

- 22 VAC 40-71-670 A. Requirements for written services agreement for assisted living facilities caring for adults with mental illness or mental retardation clarified to include a public or private mental health clinic, treatment facility or agent.

- 22 VAC 40-71-700 B. Clarified that the special care unit be self-contained.

- 22 VAC 40-71-700 B 9. For assisted living facilities caring for adults with dementia/serious cognitive deficits, added that protective devices must be on windows in common areas accessible to residents with dementia.

- 22 VAC 40-71-700 B 11. For assisted living facilities caring for adults with dementia/serious cognitive deficits, the camouflaging of exits was removed from the list of examples of environmental precautions.

- Minor editing and technical changes have been made for clarity.

Philosophy and Guiding Principles Statement:

The purpose of these regulations is to set minimum and reasonable standards for licensure of adult care residences. An adult care residence provides safe and home-like quality living arrangements for adults who may have limited types or degrees of functional capabilities. These regulations maximize independence and promote the principles of individuality, personal dignity, freedom of choice, and fairness for all individuals residing in adult care residences.

Consistent with this philosophy, these regulations shall embody the following guiding principles:

- That all residents are entitled to appropriate, safe and quality care;

- That each resident shall be viewed as an individual and empowered to make decisions regarding his care;

- That each residence should identify the types and extent of services offered and those services should reflect the needs of the population in care;

- That the resident should be entitled to remain in care as long as the facility is able to adequately care for the resident within the limitations established by law, so that

social ties and relationships may be preserved to the fullest extent possible.

-That standards are consistent with the provision of cost effective services.

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

Agency Contact: Copies of the regulation may be obtained from Jahn Hady, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219, telephone (804) 692-2395.

22 VAC 40-71-10 et seq. Standards and Regulations for Licensed Adult Care Residences.

[CHAPTER 71.
STANDARDS AND REGULATIONS FOR LICENSED ADULT
CARE RESIDENCES.]

PART I.
GENERAL PROVISIONS.

[~~§ 1.4.~~ 22 VAC 40-71-10.] Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate [setting level of care] and services.

"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.

"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 regulations for licensed adult care residences.

"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed.

Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Ambulatory" means the condition of a resident who:

1. Is physically and mentally able to exit the residence, without assistance in an emergency and who can ascend or descend stairs if present in any necessary exit path, or
2. Because of physical or mental impairment requires limited assistance, such as the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command, to exit the residence in an emergency.

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

["Building" means a structure with exterior walls under one roof.]

~~"Case management" means [an activity performed by an employee of a public human service agency to locate, coordinate and monitor services for applicants and recipients of the Auxiliary Grants Program and for private-pay residents who purchase the service. multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.]~~

"Case manager" means an employee of a public human services agency [~~having a contract with the Department of Medical Assistance Services to provide case management services and who is qualified to perform case management activities who is qualified and designated to develop and coordinate plans of care~~].

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms, including when the drug is used in one or more of the following ways:

1. In excessive dose (including duplicate drug therapy);
2. For excessive duration;
3. Without adequate monitoring;
4. Without adequate indications for its use;
5. In the presence of adverse consequences which indicate the dose should be reduced or discontinued; and
6. In a manner that results in a decline in the resident's functional status.

"Committee" means a person who has been legally invested with the authority and charged with the duty of

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managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or
2. Individuals with a health care condition with a high potential for medical instability.

"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 Code of Virginia.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities. Examples are likely to include nursing staff, geriatric assistants and mental health workers but are not likely to include waiters, chauffeurs, and cooks.

"Discharge" means the movement of a resident out of the adult care residence.

"Emergency" means, as it applies to restraints, a situation which may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an adult care residence when the person's health and safety would be jeopardized by not permitting entry into the facility until the requirements for admission have been met.

"Extended license" means a license that is granted for more than one year's duration because the facility demonstrated a pattern of strong compliance with licensing standards.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent unnecessary additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an adult care residence other than residents or staff.

"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 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 pursuant to § 37.1-234 of the Code of Virginia.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without requiring the assistance of any staff member in the adult care residence.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of any staff member in the adult care residence. (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.)

"Independent physician" means a physician who is chosen by the resident of the adult care residence and who has no financial interest in the adult care residence, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Individualized service plan" means the written description of actions to be taken by the licensee to meet the assessed needs of the resident.

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

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Licensee" means any person, association, partnership or corporation to whom the license is issued.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a clinical social worker, dentist, licensed practical nurse, nurse practitioner, pharmacist, physical therapist, physician, physician's assistant, psychologist, registered nurse, and speech-language pathologist.

NOTE: Responsibilities of physicians contained within these regulations may be implemented by nurse practitioners or physicians' assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Maintenance [2] or [2] care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual. Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

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

NOTE: An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Mental impairment" means a disability which reduces an individual's ability to reason or make decisions.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means a resident of an adult care residence who by reason of physical or mental impairment is unable to exit the residence in an emergency without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances which may require the use of a restraint for the purpose of providing support to a physically weakened resident.

"Payee" means an individual, other than the guardian or committee, who has been designated to receive and administer funds belonging to a resident in an adult care residence. A payee is not a guardian or committee unless so appointed by the court.

"Personal representative" means the person representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, committee, attorney-in-fact under durable power of attorney, next of kin, descendant, trustee, or other person expressly named by the resident as his agent.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the anti-anxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the Federal Drug Administration (FDA).

"Public pay" means a resident of an adult care facility eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home- and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of adult care residences, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility preadmission [screening screenings] .

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional which are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to enhance or improve his level of functioning.

"Resident" means any aged, infirm, or disabled adult residing in an adult care residence for the purpose of receiving maintenance [and or] care.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes independent living facilities that voluntarily become licensed.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to these regulations.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as

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range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Skilled nursing treatment" means a service ordered by a physician which is provided by and within the scope and practice of a licensed nurse.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Transfer trauma" means feelings or symptoms of stress, emotional shock or disturbance, hopelessness, or confusion resulting from the resident being moved from one residential environment to another.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form which may be used for private pay residents, i.e., those not eligible for benefits under the Auxiliary Grants Program. Social and financial information which is not relevant because of the resident's payment status is not included on the private pay version of the form.

[§-4-2. 22 VAC 40-71-20.] Applicability.

A. These standards and regulations for licensed adult care residences 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.

B. The following types of facilities are not subject to licensure as an adult care residence:

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.

[§-4-3. 22 VAC 40-71-30.] Types of facilities and scope of services.

A. An adult care residence licensed for residential living as defined in [§-4-7 22 VAC 40-71-10] shall comply with Parts I through V.

B. An adult care residence licensed for assisted living as defined in [§-4-4 22 VAC 40-71-10] shall comply with Parts I through VI.

NOTE: Within assisted living there are two payment levels for recipients of an auxiliary grant: regular assisted living and intensive assisted living as defined in regulations promulgated by the Department of Medical Assistance Services.

[§-4-4. 22 VAC 40-71-40.] Program of care and program description.

A. There shall be a program of care that:

1. Meets the resident population's physical, mental, emotional, and psychosocial needs;
2. Provides protection, guidance and supervision;
3. Promotes a sense of security and self-worth;
4. Promotes the resident's involvement with appropriate community resources; and
5. Meets the objectives of the service plan.

B. Each facility shall develop a written program description which shall be available to prospective residents and the general public and which shall include the following elements:

1. A description of the characteristics of the population to be served.
2. A description of the program components and services to be provided.

C. The facility shall update the program description as the characteristics of the residents change and shall review the description at least annually.

PART II.

PERSONNEL AND STAFFING REQUIREMENTS.

[§-2-4. 22 VAC 40-71-50.] Licensee.

A. The licensee shall ensure compliance with all regulations for licensed adult care residences and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the facility's own policies.

B. 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 protect the physical and mental well-being of residents.
4. The licensee shall keep such records and make such reports as required by these regulations for licensed adult care residences. Such records and reports may be inspected at any reasonable time in order to determine compliance with these regulations.
5. The licensee shall meet the qualifications of the administrator if he assumes those duties.

C. An adult care residence 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.

[~~§ 2-2~~ 22 VAC 40-71-60.] Administrator.

A. Each residence shall have an administrator of record. This does not prohibit the administrator from serving more than one facility.

B. The administrator shall meet the following minimum qualifications and requirements:

1. The administrator shall be at least 21 years of age.
2. He shall be able to read, to write, and to understand these regulations.
3. He shall be able to perform the duties and to carry out the responsibilities required by these regulations.
4. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED), and have completed at least one year of successful post secondary education from an accredited college or institution or administrative or supervisory experience in caring for adults in a group care facility. The following exception applies: Administrators employed prior to the effective date of these standards shall be a high school graduate or shall have a GED, or shall have completed one year of successful experience in caring for adults in a group care facility.
5. He shall demonstrate basic respect for the dignity of residents by ensuring compliance with residents' rights.
6. He shall meet the requirements stipulated for all staff in subsection A of [~~§ 2-3~~ 22 VAC 40-71-70].
7. He shall not be a resident.

C. The residence licensee/operator, residence administrator, relatives of the licensee/operator or administrator, or residence employees shall not act as, seek to become, or become the committee or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1 of the Code of Virginia.

D. Facility owners shall notify the licensing agency of a change in a facility's administrator. The notifications shall be sent to the licensing agency in writing within 10 working days of the change.

E. It shall be the duty of the administrator to oversee the day-to-day operation of the residence. This shall include, but shall not be limited to, responsibility for:

1. Services to residents;
2. Maintenance of buildings and grounds;
3. Supervision of adult care residence staff.

F. 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.

G. When an administrator terminates employment, a new administrator shall be hired within 90 days from the date of termination.

H. The administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or client specific training needs within each 12-month period. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on the resident who is mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, location, date and number of hours.

[~~§ 2-3~~ 22 VAC 40-71-70.] Personnel qualifications.

A. All staff members including the administrator, shall:

1. Be of good character;
2. Be physically and mentally capable of carrying out assigned responsibilities;
3. Be considerate and tolerant of aged and disabled persons;
4. Be clean and well-groomed;
5. Meet the requirements specified in the Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers ([~~VR 615-37-04~~ 22 VAC 40-90-10 et seq.]).

B. All staff shall be able to communicate in English effectively both orally and in writing as applicable to their job responsibilities.

C. All direct care staff shall be at least 18 years of age unless certified as a nurse aide.

D. Direct care staff who are responsible for caring for residents with special health care needs shall only provide services within the scope of their practice and training.

[~~§ 2-4~~ 22 VAC 40-71-80.] Staff 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 regulations for adult care residences as it relates to their duties and responsibilities.

B. All personnel shall be trained in the relevant laws, regulations, and the residence's policies and procedures sufficiently to implement the following:

1. Emergency and disaster plans for the facility;
2. Techniques of complying with emergency 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;

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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. Techniques for assisting residents in overcoming transfer trauma.

8. Specific duties and requirements of their positions. Training in these areas shall occur within the first seven days of employment, and prior to assuming job responsibilities unless under the sight supervision of a trained staff person.

C. Within the first 30 days of employment, all direct care staff 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 residence shall provide at least eight hours of training annually for direct care staff.~~ On an annual basis, all direct care staff shall attend at least eight hours of training.]

1. The training shall be relevant to the population in care and shall be provided through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of this training shall be kept by the facility in a manner that allows for identification by individual employee.

[~~§-2.5.~~ 22 VAC 40-71-90.] Staff duties performed by residents.

A. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

B. There shall be a written agreement between the residence and any resident who performs staff duties.

1. The agreement shall specify duties, hours of work, and compensation.

2. The agreement shall not be a condition for admission or continued residence.

3. The resident shall enter into such an agreement voluntarily.

[~~§-2.6.~~ 22 VAC 40-71-100.] 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.

[~~§-2.7.~~ ~~Health requirements and 22 VAC 40-71-110.~~] Employee records [and health requirements].

A. A record shall be established for each staff member. It shall not be destroyed until two years after employment is terminated.

B. Personal and social data to be maintained on employees are as follows:

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 date of the reference, the source and the content;

7. For persons employed after July 1, 1992, an original criminal record report [and a sworn disclosure statement];

8. Previous experience or training or both;

9. Social security number;

10. Name and telephone number of person to contact in an emergency;

11. Notations of formal training received following employment; and

12. Date and reason for termination of employment.

C. Health information required by these standards shall be maintained at the facility for the licensee or administrator or both, each staff member, and each household member who comes in contact with residents.

1. Initial tuberculosis examination and report.

a. Within 30 days before or seven days after employment, each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form.

[~~b.~~ ~~If the evaluation is not secured prior to employment and the individual has a cough, the person shall wear a mask until the evaluation is obtained.~~]

[~~e. b.~~] When a staff person terminates work at a 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.

[d. c.] Each individual shall submit documentation that he is free of tuberculosis in a communicable form. [This information shall include the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination as deemed appropriate by a physician to rule out tuberculosis in a communicable form.] This documentation shall be maintained at the facility and shall include the information contained on the form [~~found in Appendix I of the User's Manual: Virginia Uniform Assessment Instrument~~ recommended by the Virginia Department of Health].

2. Subsequent evaluations. [~~Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms shall immediately be removed from contact with the residents and personnel of the residence. These individuals shall not resume contact with the residents until they have received a tuberculosis evaluation that ensures the absence of the disease.~~

a. Any individual who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

b. Any individual who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Any individual not previously reacting significantly to a Mantoux tuberculin skin test shall be retested annually. Annual chest x-rays are not required.]

3. [~~All staff shall submit documentation annually that confirms the absence of tuberculosis. This documentation shall be valid for one year from the date written. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the residence until tuberculosis is ruled out or determined by a physician to be noninfectious.~~]

4. If a staff member develops an active case of tuberculosis the facility shall report this information to the local health department.

D. At the request of the administrator of the facility or the department, 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 specific individual.

E. 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:

1. Shall be removed immediately from contact with residents; and
2. Shall not be allowed contact with residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

[§-2.8. 22 VAC 40-71-120.] First aid qualifications and supplies.

A. There shall be at least one staff member on the premises at all times who shall have a current first aid certificate 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, unless the facility has an on duty registered nurse or licensed practical nurse.

B. 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 approved annually.

C. A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible. The kit shall include, but not be limited to, the following items:

Activated charcoal, adhesive tape, antiseptic ointment, band-aids (assorted sizes), blankets (disposable or other), cold pack, disposable gloves, gauze pads and roller gauze (assorted sizes), hand cleaner (e.g., antiseptic towelettes), plastic bags, scissors, small flashlight and extra batteries, syrup of ipecac, triangular bandage, and tweezers.

[§-2.9. 22 VAC 40-71-130.] Standards for staffing.

A. The adult care residence shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to assure compliance with these regulations.

B. There shall be sufficient staff on the premises at all times to implement the approved fire plan.

C. [~~In each building when at least one resident is present,] There shall be at least one staff member awake and on duty at all times [~~An exception to this is in facilities with 19 or fewer residents, when none of the residents requires a staff member awake and on duty at all times, the staff member on duty does not have to be awake during the night.~~ in each building when at least one resident is present.]~~

[~~D. Staffing plans shall take into consideration vacant positions and staff absences. EXCEPTION: In buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if none of the residents requires a staff member awake and on duty at night.~~]

[§-2.10. 22 VAC 40-71-140.] Communication among staff.

A method of written communication shall be utilized as a means of keeping staff on all shifts informed of significant happenings or problems experienced by residents, including physical and mental complaints or injuries.

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PART III.

ADMISSION, RETENTION AND DISCHARGE [POLICIES OF RESIDENTS].

[~~§ 3-1.~~ 22 VAC 40-71-150.] Admission and retention [policies of residents].

A. No resident shall be admitted or retained for whom the facility cannot provide or secure appropriate care, or who requires a level of service or type of service for which the facility is not licensed or which the facility does not provide, or if the facility does not have the staff appropriate in numbers and with appropriate skill to provide such services.

B. Adult care residences shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon:

1. The completed UAI;
2. The physical examination report;
3. An interview between the administrator or a designee responsible for admission and retention decisions, the resident and his personal representative, if any.

NOTE: In some cases, medical conditions may create special circumstances which make it necessary to hold the interview on the date of admission.

C. Upon receiving the UAI prior to admission of a resident, the adult care residence administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the personal representative, if any, and case manager, if any, and shall be kept on file at the facility.

D. All residents shall be 18 years of age or older.

E. No person shall be admitted without his consent and agreement, or that of his personal representative, if applicable.

F. Adult care residences shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;
2. Dermal ulcers III and IV except those stage III ulcers which are determined by an independent physician to be healing [, as permitted in subsection G of this section] ;
3. Intravenous therapy or injections directly into the vein [,] except for intermittent intravenous therapy managed by a health care professional licensed in Virginia [or] as permitted in subsection H [or subsection I] of this section;
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection [G] of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance;

12. Individuals whose health care needs cannot be met in the specific adult care residence as determined by the residence.

G. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's treatment plan.

H. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

I. At the request of the resident, care for the conditions or care needs specified in subdivisions F 3 and F 7 of this section may be provided to a resident in an adult care residence by a physician licensed in Virginia, a nurse licensed in Virginia under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. This standard does not apply to recipients of auxiliary grants.

J. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the adult care residence staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

K. Notwithstanding § 63.1-174.001 of the Code of Virginia, at the request of the resident, hospice care may be provided in an adult care residence under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et. seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

L. A person shall have a physical examination by an independent physician, including screening for tuberculosis, within 30 days prior to the date of admission. The report of

such examination shall be on file at the adult care residence and shall contain the following:

1. The date of the physical examination;
2. Height, weight, and blood pressure;
3. Significant medical history;
4. General physical condition, including a systems review as is medically indicated;
5. Any diagnosis or significant problems;
6. Any allergies;
7. Any recommendations for care including medication, diet and therapy;
8. The type or types of tests for tuberculosis used and the results. [This information shall include the results of a Mantoux tuberculin skin test, chest x-ray or bacteriological examination as deemed appropriate by a physician to rule out tuberculosis in a communicable form.] Documentation is required which includes the information contained on the form [~~in Appendix I of the Users Manual—Virginia Uniform Assessment Instrument recommended by the Virginia Department of Health~~] ;
9. A statement that the individual does not have any of the conditions or care needs prohibited by subsection F of this section;
10. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory; and
11. Each report shall be signed by the examining clinician.

NOTE: See [§ 1.4 22 VAC 40-71-10] , definition of "licensed health care professional" for clarification regarding "physician."

M. When a person is accepted for respite care or on an intermittent basis, the physical examination report shall be valid for six months.

N. Subsequent tuberculosis evaluations.

1. 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 and documentation that ensures that the individual is free of tuberculosis in a communicable form.~~] infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

2. Any resident who develops respiratory symptoms of three or more weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.]

[~~2. 3.~~] If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

O. The department, at any time, may request a report of a current psychiatric or physical examination, giving the diagnoses or evaluation or both, for the purpose of

determining whether the resident's needs may continue to be met in an adult care residence. When requested, this report shall be in the form specified by the department.

P. An adult care residence shall only admit or retain residents as permitted by its use group classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report; and
2. Information contained in the most recent UAI.

Q. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or an independent physician or a Virginia adult protective services worker for private pay individuals.

R. When an emergency placement occurs, the person shall remain in the adult care residence no longer than seven working days, unless all the requirements for admission have been met and the person has been admitted.

S. Prior to or at the time of admission to an adult care residence, the following personal and social data on a person shall be [~~obtained and placed~~ maintained] in the individual's record:

1. Name;
2. Last home address, and address from which resident was received, if different;
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 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 personal dentist, if known;
12. Name, address and telephone number of clergyman and place of worship, if applicable;
13. Name, address and telephone number of local department of social services or any other agency, if applicable, and the name of the case manager or caseworker;
14. Service in the Armed Forces, if applicable;
15. Special interests and hobbies; and
16. Information concerning advance directives, if applicable.

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NOTE: For assisted living facilities, [~~§ 6-2~~ 22 VAC 40-71-640] also applies.

T. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate personal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care which specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care which the facility offers and any related charges;

c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;

d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the residence at the time of admission or at some future date, it shall be stipulated in the agreement; and

f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his appropriate personal representative.

3. Acknowledgment that the resident has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.

4. Acknowledgment that the resident has been informed of the policy required by [~~§ 5-4~~ 22 VAC 40-71-490] I regarding weapons.

5. Those actions, circumstances, or conditions which would result or might result in the resident's discharge from the facility.

6. Acknowledgment that the resident has reviewed a copy of § 63.1-182.1 of the Code of Virginia, Rights and Responsibilities of Residents of Adult Care Residences, and that the provisions of this statute have been explained to him.

7. Acknowledgment that the resident or his personal representative has reviewed and had explained to him the residence's policies and procedures for implementing § 63.1-182.1 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

8. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer, if the facility has such a policy.

U. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and any personal representative and shall be retained in the resident's record.

V. A new agreement shall be signed or the original agreement shall be updated and signed by the licensee or administrator when there are changes in financial arrangements, services, or requirements governing the resident's conduct. If the original agreement provides for specific changes in financial arrangements, services, or requirements, this standard does not apply.

W. An adult care residence shall establish a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 of the Code of Virginia is accepted back in the adult care residence if the resident is not involuntarily committed pursuant to § 37.1-67.3 of the Code of Virginia.

[X. If an adult care residence allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.]

[~~§ 3-2~~ 22 VAC 40-71-160.] Discharge [~~policies~~ of residents] .

A. When actions, circumstances, conditions, or care needs occur which will result in the discharge of a resident, discharge planning shall begin immediately. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made.

B. The adult care residence shall immediately notify the resident and the resident's personal representative, if any, of the planned discharge. The notification shall occur at least 14 calendar days prior to the actual discharge date. The reason for the move shall be discussed with the resident and his personal representative at the time of notification.

C. The adult care residence shall adopt and conform to a written policy regarding the number of calendar days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 45 days.

D. The facility shall assist the resident and his personal representative, if any, in the discharge or transfer processes. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his personal representative.

E. When a resident's condition presents an immediate and serious risk to the health, safety or welfare of the resident or others and emergency discharge is necessary, 14-day notification of planned discharge does not apply, although the

reason for the relocation shall be discussed with the resident and when possible his personal representative, if any.

F. Under emergency conditions, the resident or his personal representative and the family, caseworker, social worker or other agency personnel, as appropriate, shall be informed as rapidly as possible, but by the close of the business day following discharge, of the reasons for the move.

G. At the time of discharge, except as noted in subdivision 5 of this subsection, the adult care residence shall provide to the resident or his personal representative a dated statement signed by the licensee or administrator which contains the following information:

1. The date on which the resident or his personal representative was notified of the planned discharge and the name of the personal representative who was notified;
2. The reason or reasons for the discharge;
3. The actions taken by the facility to assist the resident in the discharge and relocation process;
4. The date of the actual discharge from the facility and the resident's destination;
5. When the termination of care is due to emergency conditions, the dated statement shall contain the above information as appropriate and shall be provided or mailed to the resident or his personal representative as soon as practicable and within 48 hours from the time of the decision to discharge.

H. A copy of the written statement required by subsection G of this section shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the adult care residence shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the adult care residence from which the resident was discharged. The adult care residence shall maintain a listing of all information shared with the receiving facility.

J. Within 60 days of the date of discharge, each resident or his appropriate personal representative shall be given a final statement of account, any refunds due, and return of any money, property or things of value held in trust or custody by the facility.

[~~K. If an adult care residence allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes, but is not limited to, the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held.~~]

PART IV.
RESIDENT ACCOMMODATIONS, CARE AND RELATED SERVICES.

[~~§ 4-1.~~ 22 VAC 40-71-170.] Assessment and individualized service plans.

A. Uniform assessment instrument.

1. Private pay residents. As a condition of admission, the facility shall obtain a UAI with the items completed that are specified in Assessment [~~and Case Management Services~~] in Adult Care Residences ([~~VR 645-46-02~~ 22 VAC 40-745-10 et seq.]). The facility shall obtain the UAI from one of the following entities:

- a. An independent physician;
- b. [~~An A facility~~] employee [~~of the facility who has the knowledge, skills and abilities of a case manager as defined in VR 645-46-02~~] with documented training in the completion of the UAI and appropriate application of level of care criteria, provided the administrator or the administrator's designated representative approves and then signs the completed UAI ; or
- c. A case manager employed by a public human services agency or other qualified assessor.

2. Public pay residents. As a condition of admission, the facility shall obtain a completed UAI from the prospective resident's case manager or other qualified assessor.

3. The UAI shall be completed within 90 days prior to the date of admission to the adult care residence except that if there has been a change in the resident's condition since the completion of the UAI which would appear to affect the admission, a new UAI shall be completed.

4. When a resident moves to an adult care residence from another adult care residence or other long-term care setting which uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed. The transferring long-term care provider must update the UAI to indicate any change in the individual's condition.

B. Facilities opting to complete the UAI for prospective private pay residents shall ensure that the information is obtained as required by [~~VR 645-46-02~~ 22 VAC 40-745-10 et seq.] .

C. Individualized service plan. The licensee/administrator or designee, in conjunction with the resident, and the resident's family, case worker, case manager, health care providers or other persons, as appropriate, shall develop and implement an individualized service plan to meet the resident's service needs.

An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

The service plan shall be completed within 45 days after admission and shall include the following:

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1. Description of identified need;
2. A written description of what services will be provided and who will provide them;
3. When and where the services will be provided; and
4. The expected outcome.

~~[If a facility is licensed to care for~~ 5. If a resident lives in a building housing 19 or fewer residents, the service plan shall include a statement that specifies whether the person does need or does not need to have a staff member awake and on duty at ~~[all times, including during the]~~ night.

The master service plan shall be filed in the resident's record; extracts from the plan may be filed in locations specifically identified for their retention, e.g., dietary plan in kitchen.

D. The individualized service plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice and home-like environment and shall include other formal and informal supports that may participate in the delivery of services.

E. Uniform assessment instruments shall be completed at least once every 12 months on residents of adult care residences. Uniform assessment instruments shall be completed as needed as the condition of the resident changes and whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. All UAIs shall be completed as prescribed in subsections A and B of this section.

F. At the request of the adult care residence, the resident's representative, the resident's physician, the Department of Social Services, or the local department of social services, an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the adult care residence. The adult care residence shall assist the resident in obtaining the independent assessment as requested.

G. For private pay residents, the adult care residence shall be responsible for coordinating with an independent physician, a case manager or other qualified assessor as necessary to ensure that UAIs are completed as required.

H. Individualized service plans shall be reviewed and updated at least once every 12 months. Individualized service plans shall be reevaluated as needed as the condition of the resident changes.

I. The licensee shall designate a staff person to review, monitor, implement and make appropriate modifications to the individualized service plan. This person shall also keep the resident's case manager, if applicable, informed of significant changes in the resident's condition.

[~~§ 4-2.~~ 22 VAC 40-71-180.] Resident records.

A. Any forms used for recordkeeping shall contain at a minimum the information specified in these regulations. Model forms, which may be copied, will be supplied by the department upon request.

[B. Any physician's notes and progress reports in the possession of the facility shall be retained in the resident's record.

C. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident and any appropriate personal representative.]

[~~B.~~ D.] 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.

[~~C.~~ E.] The licensee shall assure that all records are treated confidentially and that information shall be made available only when needed for care of the resident. All records shall be made available for inspection by the department's representative.

[F. Residents shall be allowed access to their own records.]

[~~D.~~ G.] The resident's individual record shall be kept current and the complete record shall be retained until two years after the resident leaves the residence.

[~~E.~~ H.] A current picture of each resident shall be readily available for identification purposes, or if the resident refuses to consent to a picture, there shall be a narrative physical description, which is annually updated, maintained in his file.

[~~§ 4-3.~~ 22 VAC 40-71-190.] Release of information from resident's record.

A. The resident or the appropriate personal representative has the right to release information from the resident's record to persons 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 persons or agencies outside the facility.

A model form, which may be copied, may be obtained from the department.

C. Only under the following circumstances is a facility permitted to release information from the resident's records or information regarding the resident's personal affairs without the written permission of the resident or his personal representative, where appropriate:

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 or his personal representative is not available to grant permission;
3. When the resident moves to another caregiving facility;
4. To representatives of the department; or
5. As otherwise required by law.

~~[§ 4.4. Contents of resident's record; access by resident.~~

~~A. Any physician's notes and progress reports in the possession of the facility shall be retained in the resident's record.~~

~~B. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident and any appropriate personal representative.~~

~~C. Residents shall be allowed access to their own records.~~

]

[§ 4.5. 22 VAC 40-71-200.] Personal possessions.

Each resident shall be permitted to keep reasonable personal property in his possession at a facility in order to maintain individuality and personal dignity. These possessions may include, but are not limited to:

1. Clothing. A facility shall ensure that each resident has his own clothing.
 - a. The use of a common clothing pool is prohibited.
 - b. If necessary, resident's clothing shall be inconspicuously marked with his name to avoid getting mixed with others.
 - c. Residents shall be allowed and encouraged to select their daily clothing and wear clothing to suit their activities and appropriate to weather conditions.
2. Personal care items. Each resident shall have his own personal care items. ~~[Shampoo, toothpaste, a toothbrush, and a comb shall be provided at no additional cost for all auxiliary grant and general relief recipients.]~~ Toilet paper and soap shall be provided for residents at all commonly shared basins and bathrooms at no additional charge.

[§ 4.6. 22 VAC 40-71-210.] Resident rooms.

A. The resident shall be encouraged to furnish or decorate his room as space and safety considerations permit and in accordance with these regulations.

B. Bedrooms shall contain the following items:

1. A separate bed with comfortable mattress, springs and pillow for each resident. 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 sturdy chair for each resident (wheelchairs do not meet the intent of this standard);
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; and
7. Window coverings for privacy.

C. Adequate and accessible closet or wardrobe space shall be provided for each resident.

D. The residence 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; and
7. Waterproof mattress covers when needed.

[§ 4.7. 22 VAC 40-71-220.] Living room or multipurpose room.

A. Sitting rooms or recreation areas or both 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 newspaper; and
7. Materials appropriate for the implementation of the planned activity program, such as books or games.

B. Space other than sleeping areas shall be provided for residents for sitting, for visiting with one another or with guests, for social and recreational activities, and for dining. These areas may be used interchangeably.

[§ 4.8. 22 VAC 40-71-230.] Dining areas.

Dining areas shall have a sufficient number of sturdy dining tables and chairs to serve all residents, either all at one time or in reasonable shifts.

[§ 4.9. 22 VAC 40-71-240.] Laundry and linens.

A. Residents' clothing shall be kept clean and in good repair.

B. Table coverings and napkins shall be clean at all times.

C. Bed and bath linens shall be changed at least every seven days and more often if needed. In facilities with common bathing areas, bath linens shall be changed after each use.

D. Table and kitchen linens shall be laundered separately from other washable goods.

E. A sanitizing agent shall be used when bed, bath, table and kitchen linens are washed.

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[~~§ 4.10.~~ 22 VAC 40-71-250.] Transportation.

The resident shall be assisted in making arrangements for transportation as necessary.

[~~§ 4.11.~~ 22 VAC 40-71-260.] Activity/recreational requirements.

A. There shall be at least 11 hours of scheduled activities available to the residents each week for no less than one hour each day. Activities shall be of a social, recreational, religious, or diversional nature. Community resources may be used to provide activities.

B. These activities shall be varied and shall be planned in consideration of the abilities, physical conditions, need and interests of the residents.

C. The month's schedule of activities shall be written and posted by the first day of the month in a conspicuous place. Residents shall be informed of the activities program.

D. A record shall be kept of the activity schedules for the past three months. They shall be available for inspection by the department.

E. Resident participation in activities.

1. Residents shall be encouraged but not forced to participate in activity programs offered by the facility and the community.

2. Any restrictions on participation imposed by a physician shall be documented in the resident's record.

[~~§ 4.12.~~ 22 VAC 40-71-270.] Resident rights.

A. 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 residence.

B. The resident has the right to voice or file grievances, or both, with the residence and to make recommendations for changes in the policies and services of the residence. The residents shall be protected by the licensee or administrator, or both, from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.

C. Any resident of an adult care residence has the rights and responsibilities as provided in § 63.1-182.1 of the Code of Virginia and these regulations.

D. The operator or administrator of an adult care residence shall establish written policies and procedures for implementing § 63.1-182.1 of the Code of Virginia.

E. The rights and responsibilities of residents in adult care residences shall be reviewed with all residents annually. [~~The facility is responsible for maintaining a written record indicating that all residents were informed of their rights on an annual basis. The written record must include the names of the residents present and the date the residents' rights were reviewed. Evidence of this review shall be the resident's written acknowledgment of having been so informed which shall include the date of the review and shall be filed in his record.~~]

F. The residence shall make available in an easily accessible place a copy of the rights and responsibilities of residents and shall include in it the name, title, address and telephone number of the appropriate regional licensing supervisor of the Department of Social Services, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (local) ombudsman program serving the area, and the toll-free number of the Department for the Rights of Virginians with Disabilities.]

[~~§ 4.13.~~ 22 VAC 40-71-280.] Visiting in the residence.

A. Daily visits to residents in the residence shall be permitted.

B. If visiting hours are restricted, daily visiting hours shall be posted in a place conspicuous to the public.

[~~§ 4.14.~~ 22 VAC 40-71-290.] Visiting outside the residence.

Residents shall not be prohibited from making reasonable visits away from the residence except when there is written order of the appropriate personal representative to the contrary.

[~~§ 4.15.~~ 22 VAC 40-71-300.] Incoming and outgoing mail.

A. Incoming and outgoing mail shall not be censored.

B. Incoming mail shall be delivered promptly.

C. Mail shall not be opened by staff except upon request of the resident or written request of the appropriate personal representative.

[~~§ 4.16.~~ 22 VAC 40-71-310.] Resident councils.

Every adult care residence shall assist the residents in establishing and maintaining a resident council, except when the majority of the residents do not want to have a council. The council shall be composed of residents of the facility and may include their family members. The council may extend membership to advocates, friends and others.

[~~§ 4.17.~~ 22 VAC 40-71-320.] Council duties.

The duties of the resident council shall be determined by the residents and may include but need not be limited to the following:

1. Assisting the facility in developing a grievance procedure;
2. Communicating resident opinions and concerns;
3. Obtaining information from the facility and disseminating the information to the residents;
4. Identifying problems and participating in the resolution of those problems;
5. Acting as a liaison with the community.

[~~§ 4.18.~~ 22 VAC 40-71-330.] Food service and nutrition.

A. When any portion of an adult care residence is subject to inspection by the State Department of Health, the residence shall be in compliance with those regulations, as evidenced by a report from the State Department of Health.

B. All meals shall be served in the dining area as designated by the facility. Under special circumstances, such as temporary illness or incapacity, meals may be served in a resident's room provided a sturdy table is used.

C. 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.

1. The facility must have an acceptable health monitoring plan for these residents and provide 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, a capability to prepare food, availability of meals when the resident is sick or temporarily unable to prepare meals for himself.

D. Personnel shall be available to help any resident who may need assistance in reaching the dining room or when eating.

[§ 4.19. 22 VAC 40-71-340.] Observance of religious dietary practices.

A. The resident's 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.

[§ 4.20. 22 VAC 40-71-350.] 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.

[§ 4.21. 22 VAC 40-71-360.] Catering or contract food service.

A. Catering service or contract food service, if used, shall be approved by the state or local health department or both.

B. Persons who are employed by a food service contractor or catering service and who are working on the premises of the adult care residence shall meet the health requirements for employees of adult care residences as specified in these 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 regulations.

[§ 4.22. 22 VAC 40-71-370.] Number of meals.

A. A minimum of three well-balanced meals shall be provided each day.

B. Bedtime snacks shall be made available for all residents desiring them and shall be listed on the daily menu.

Vending machines shall not be used as the only source for bedtime snacks.

[§ 4.23. 22 VAC 40-71-380.] Menus for meals and snacks.

A. Food preferences of residents shall be considered when menus are planned.

B. Menus for the current week shall be dated and posted in an area conspicuous to residents.

C. Any menu substitutions or additions shall be recorded.

D. A record shall be kept of the menus served for three months. They shall be subject to inspection by the department.

E. Minimum daily menu.

1. Unless otherwise ordered in writing by the [attending resident's] physician, the daily menu, including snacks, for each resident shall [provide, at least, the following:

a. ~~Five to six ounces of protein food (meat, poultry, fish, eggs, cheese, dry beans, etc.);~~

b. ~~Two cups of milk or milk substitute (such as cheese, buttermilk, pudding, yogurt, etc.);~~

c. ~~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 vitamin A source shall be served at least three times each week);~~

d. ~~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) meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex and activity of the resident] .~~

2. Other foods may be added.

3. Second servings shall be provided, if requested, at no additional charge.

4. At least one meal each day shall include a hot main dish.

[F. Special diets. When a diet is prescribed for a resident by his physician, it shall be prepared and served according to the physician's orders.]

[§ 4.24. ~~Special diets;~~ 22 VAC 40-71-390.] Emergency food and water.

[A. ~~When a diet is prescribed for a resident by the attending physician, it shall be prepared and served according to the physician's orders.~~

B.] The facility shall ensure the availability of a 72-hour emergency food and drinking water supply.

[§ 4.25. 22 VAC 40-71-400.] Administration of medications and related services.

A. No medication, diet, medical procedure or treatment 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 [dated] notation of the

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physician's verbal order. Verbal orders shall be reviewed and signed by a physician within 10 working days.

B. A medicine cabinet, container or compartment shall be used for storage of medications prescribed for residents when such medications are administered by the facility.

1. The storage area shall be locked.
2. When in use, adequate illumination shall be provided in order to read container labels, but the storage area shall remain darkened when closed.
3. The storage area shall not be located in the kitchen, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

C. A resident may be permitted to keep his own medication in a secure place in his room if the UAI has indicated that the resident is capable of self-administering medication. This does not prohibit the facility from storing or administering all medication provided the provisions of subsection D of this section are met.

D. Administration of medication.

1. Drugs shall be administered to those residents who are dependent in medication administration as documented on the UAI, provided subdivisions 2 and 3 of this subsection are met.

2. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

3. All medications shall be removed from the pharmacy container and administered by the same authorized person within two hours.

[4. All medications shall be administered in accordance with the physician's instructions.]

E. In the event of an adverse drug reaction or a medication error, first aid shall be administered as directed by the Virginia Poison Control Center, pharmacist, or physician. The resident's physician shall be notified as soon as possible and the actions taken by the staff person shall be documented.

F. The facility shall document all medications administered to residents, including over-the-counter medications. This documentation shall include:

1. Name of the resident;
2. Date prescribed;
3. Drug product name;
4. Dosage;
5. Strength of the drug;
6. Route (for example, by mouth);
7. How often medication is to be taken;

8. [Date and] time given and initials of staff administering the medication;

9. Dates the medication is discontinued or changed;

10. Any medication errors or omissions;

11. Significant adverse effects; and

12. The name and initials of all staff administering medications.

G. The facility shall have a plan for proper [disposition disposal] of medications.

H. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;

2. Licensed health care professionals are responsible for medication management; or

3. The resident's physician has provided detailed written instructions or facility staff have telephoned the doctor prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact timeframes the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

I. When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.

2. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the main source of oxygen is not permitted.

3. The facility shall make available to staff the emergency numbers to contact the resident's physician and the oxygen vendor for emergency service or replacement.

J. The performance of all medical procedures and treatments ordered by a physician shall be documented and the documentation shall be retained in the residents' record.

[~~§ 4.26. 22 VAC 40-71-410.~~] Do Not Resuscitate (DNR) orders.

Do Not Resuscitate orders shall only be carried out in a licensed adult care residence when the order has been prescribed by a physician, is included in the individualized service plan and there is a licensed nurse available to implement the order.

[~~§ 4-27~~ 22 VAC 40-71-420.] Health, hygiene, and grooming.

A. 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.)

1. The resident shall be assisted in making appropriate arrangements for the needed care. When mental health care is needed or desired by the resident, this assistance shall include securing the services of the local community mental health and mental retardation services board, state or federal mental health clinic or similar facility or agent in the private sector.

2. When the resident is unable to participate in making appropriate arrangements, the resident's family, personal representative, cooperating social agency or personal physician shall be notified of the need.

B. When the resident suffers serious accident, illness, or medical condition, medical attention shall be secured immediately.

C. The next of kin or personal representative and any responsible social agency shall be notified [as soon as possible but at least] within 24 hours of any serious illness, or accident, or medical condition including the use of a restraint in an emergency. A notation shall be made in the resident's record of such notice.

D. Each facility shall ensure that health, hygiene and grooming needs of the residents are met, to include but not be limited to the following:

1. Bathing as needed or desired;
2. Shampooing, combing and brushing of hair;
3. Shaving;
4. Trimming of fingernails and toenails (certain medical conditions necessitate that this be done by a licensed health care professional); and
5. Daily tooth brushing and denture care.

E. Any significant changes in a resident's physical or mental condition, including illness or injury, shall be documented in the resident's record.

[~~§ 4-28~~ 22 VAC 40-71-430.] Incident reports.

All facilities [~~licensed pursuant to these regulations~~] shall report to the licensing agency by the next working day any major incident which has or could threaten the health, safety or welfare of the residents or staff, such as a fire.

[~~§ 4-29~~ 22 VAC 40-71-440.] Management and control of resident funds.

Pursuant to § 63.1-182.1 A 3 of the Code of Virginia, unless a committee or guardian of a resident has been appointed (see [~~§ 2-2~~ 22 VAC 40-71-60] C), the resident shall be free to manage his personal finances and funds; provided, however, that the residence may assist the resident in such management in accordance with [~~§§ 4-30 and 4-31~~ 22 VAC 40-71-450 and 22 VAC 40-71-460].

[~~§ 4-30~~ 22 VAC 40-71-450.] Resident accounts.

The residence shall provide to each resident a monthly statement or itemized receipt of the resident's account and shall place a copy also in the resident's record. 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 overpayment on the resident's account.

[~~§ 4-34~~ 22 VAC 40-71-460.] Safeguarding residents' funds.

A. If the resident delegates the management of personal funds to the residence, the following standards apply:

1. Residents' funds shall be held separately from any other moneys of the residence. Residents' funds shall not be borrowed, used as assets of the residence, or used for purposes of personal interest by the licensee/operator, administrator, or residence staff.

2. If the residence's accumulated residents' funds are maintained in a single interest-bearing account, each resident shall receive interest proportionate to his average monthly account balance. The residence may deduct a reasonable cost for administration of the account.

3. If any personal funds are held by the residence for safekeeping on behalf of the resident, a written accounting of money received and disbursed, showing a current balance, shall be maintained. Residents' funds and the accounting of the funds shall be made available to the resident or the personal representative or both upon request.

B. No residence administrator or staff member shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through residence personnel. Any residence administrator or staff member so named shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law, shall provide a quarterly accounting to the resident, and, upon termination of the power of attorney or trust for any reason, shall return all funds and assets, with full accounting, to the resident or to his personal representative or to another responsible party expressly designated by the resident. See also [~~§ 2-2~~ 22 VAC 40-71-60] C regarding committees or guardians appointed by a court of competent jurisdiction.

[~~§ 4-32~~ 22 VAC 40-71-470.] Restraints.

A. Restraints shall not be used for purposes of discipline or convenience. Restraints may only be used to treat a resident's medical symptoms.

B. The facility may only impose physical restraints to treat the [~~residents~~ resident's] medical symptoms [~~which include but are not limited to physical, emotional, and behavioral problems that warrant the use of restraints~~], if the restraint is:

1. Necessary to ensure the physical safety of the resident or others; and

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2. Imposed in accordance with a physician's written order that specifies the circumstances and duration under which the restraint is to be used, except in emergency circumstances until such an order can reasonably be obtained; and

3. Not ordered on a standing, blanket, or "as needed" (PRN) basis.

C. Whenever physical restraints are used, the following conditions shall be met:

1. A restraint shall be used only to the extent that is minimally necessary to protect the resident or others.

2. Restraints shall *only* be applied by staff who have received training in their use as specified by [~~§ 4.33-A~~ 22 VAC 40-71-480] B;

3. The facility shall closely monitor the resident's condition which includes checking on the resident at least every 30 minutes;

4. The facility shall assist the resident as often as necessary, but no less than 10 minutes every two hours, for his safety, comfort, exercise, and elimination needs;

5. The facility shall release the resident from the restraint as quickly as possible;

6. Staff shall keep a record of restraint usage, checks, and care periods and note any unusual occurrences or problems;

7. Any facility using restraints shall develop and implement a written plan to reduce or eliminate the use of restraints in the facility;

8. In nonemergencies (as defined in [~~§ 4.4~~ 22 VAC 40-71-10]):

a. Restraints shall be used as a last resort and only if the facility, after completing, implementing and evaluating the resident's comprehensive assessment and service plan, determines and documents that less restrictive means have failed;

b. Restraints shall be used in accordance with the resident's service plan which allows for their progressive removal or the progressive use of less restrictive means;

c. The facility shall explain the use of the restraint [and potential negative outcomes] to the resident or his personal representative and the resident's right to refuse the restraint, and shall obtain the written consent of the resident or his personal representative;

d. Restraints shall be applied so as to cause no physical injury and the least possible discomfort; and

9. In emergencies (as defined in [~~§ 4.4~~ 22 VAC 40-71-10]):

a. Restraints shall not be used unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the facility;

b. The order shall be confirmed in writing by the physician as soon as possible;

c. The resident shall be within sight and sound of staff at all times; and

d. If the emergency restraint is necessary for longer than two hours, the resident shall be transferred to a medical facility or monitored in the facility by a mental health crisis team until his condition has stabilized to the point that the attending physician documents that restraints are not necessary.

D. The use of chemical restraints is prohibited.

[~~§ 4.33~~ 22 VAC 40-71-480.] Staff training when aggressive or restrained residents are in care.

[~~A~~] The following training is required for staff in adult care residences that accept, or have in care, residents who are aggressive or restrained [- :]

[~~B~~ 1.] Aggressive residents.

[~~4~~ a.] Direct care staff shall be trained in methods of dealing with residents who have a history of aggressive behavior or of dangerously agitated states prior to being involved in the care of such residents.

[~~2~~ b.] This training shall include, at a minimum, information, demonstration, and practical experience in self-protection and in the prevention and de-escalation of aggressive behavior.

[~~C~~ 2.] Restrained residents.

[~~4~~ a.] Direct care staff shall be appropriately trained in caring for the health needs of residents who are restrained prior to being involved in the care of such residents. Licensed medical personnel, e.g., R.N.s, L.P.N.s, are not required to take this training if their academic background deals with this type of care.

[~~2~~ b.] This training shall include, at a minimum, information, demonstration and experience in:

[~~a~~ (1)] The proper techniques for applying and monitoring restraints;

[~~b~~ (2)] Skin care appropriate to prevent redness, breakdown, and decubiti;

[~~c~~ (3)] Active and active assisted range of motion to prevent joint contractures;

[~~d~~ (4)] Assessment of blood circulation to prevent obstruction of blood flow and promote adequate blood circulation to all extremities;

[~~e~~ (5)] Turning and positioning to prevent skin breakdown and keep the lungs clear;

[~~f~~ (6)] Provision of sufficient bed clothing and covering to maintain a normal body temperature; and

[~~g~~ (7)] Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident.

[~~D-3~~] The training described in [~~subsections B and C~~ subdivisions 1 and 2] of this section shall meet the following criteria:

[~~4. a.~~] Training shall be provided by a qualified health professional.

[~~2. b.~~] A written description of the content of this training, a notation of the person/agency/organization or institution providing the training and the names of staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of staff trained and the date of training are required.

[~~E-4~~] Refresher training for all direct care staff shall be provided at least annually or more often as needed.

[~~4. a.~~] The refresher training shall encompass the techniques described in [~~subsection B or C~~ subdivision 1 or 2] of this section, or both.

[~~2. b.~~] A record of the refresher training and a description of the content of the training shall be maintained by the facility.

PART V. BUILDINGS AND GROUNDS.

[~~§-5-4~~ 22 VAC 40-71-490.] General requirements.

A. A certificate of occupancy shall be obtained as evidence of compliance with the applicable edition of the Virginia Uniform Statewide Building Code.

B. Before construction begins or contracts are awarded for any new construction, remodeling, or alterations, plans shall be submitted to the department for review.

C. Doors and windows.

1. All doors shall open and close readily and effectively.
2. Any doorway or window that is used for ventilation shall be effectively screened.

D. 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 or residences 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 residence.

E. There shall be an ample supply of hot and cold water from an approved source available to the residents at all times.

F. Hot water at taps available to residents shall be maintained within a range of 105-120°F.

G. Where there is an outdoor area accessible to residents, such as a porch or lawn, it shall be equipped with furniture in season.

H. Cleaning supplies and other hazardous materials shall be stored in a locked area. This safeguard shall be optional in an independent living environment.

I. Each facility shall develop and implement a written policy regarding weapons on the premises of the facility that will ensure the safety and well-being of all residents and staff.

[~~§-5-2~~ 22 VAC 40-71-500.] Maintenance of buildings and grounds.

A. The interior and exterior of all buildings shall be maintained in good repair.

B. The interior and exterior of all buildings shall be kept clean and shall be free of rubbish.

C. All buildings shall be well ventilated and free from foul, stale and musty odors.

D. Adequate provisions for the collection and legal disposal of garbage, ashes and waste material shall be made.

1. Covered, vermin-proof, watertight containers shall be used.
2. Containers shall be emptied and cleaned at least once a week.

E. Buildings shall be kept free of flies, roaches, rats and other vermin. The grounds shall be kept free of their breeding places.

F. All furnishings and equipment, including sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair.

G. Each room shall have walls, ceiling, and floors or carpeting that may be cleaned satisfactorily.

H. All inside and outside steps, stairways and ramps shall have nonslip surfaces.

I. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice [~~etc~~].

J. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

K. 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 authority, by the insurance company, or by the elevator company shall be evidence of such inspection.

[~~§-5-3~~ 22 VAC 40-71-510.] Heating, ventilation, and cooling.

A. 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.

B. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat which shows the temperature in the room.

C. Heat.

1. Heat shall be supplied from a central heating plant or by an approved electrical heating system.

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2. 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, 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. These appliances shall be used in accordance with the manufacturer's instructions.

3. 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.

D. Cooling devices.

1. Cooling devices shall be made available in those areas of buildings used by residents when inside temperatures exceed 85°F.

2. Cooling devices shall be placed to minimize drafts.

3. Any electric fans shall be screened and placed for the protection of the residents.

4. When air conditioners are not provided, the facility shall develop and implement a plan to protect residents from heat related illnesses.

[§ 5-4. 22 VAC 40-71-520.] Lighting and lighting fixtures.

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. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

D. Hallways, stairwells, foyers, doorways, and exits utilized by residents shall be kept well lighted at all times residents are present in the building.

E. 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. When necessary to reduce glare, coverings shall be used for windows and lights.

G. If used, fluorescent lights shall be replaced if they flicker or make noise.

H. 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. Open flame lighting is prohibited.

[§ 5-5. 22 VAC 40-71-530.] 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, except that as of the effective date of these regulations all buildings approved for construction or change in use group, as referenced in the BOCA National Building Code, shall have not less than 100 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, except that as of the effective date of these regulations all buildings approved for construction or change in use group, as referenced in the BOCA National Building Code, shall have not less than 80 square feet of floor area per person in rooms accommodating two or more residents; For square footage as provided in this subdivision:~~

a. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the BOCA National Building Code, shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

b. As of February 1, 1996, all buildings approved for construction or change in use group, as referenced in the BOCA National Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;]

[4. 3.] For ceilings at least 7½ feet in height;

[5. 4.] For window areas as provided in this subdivision:

a. There shall be at least eight square feet of glazed window area above ground level in a room housing one person, and

b. There shall be at least six square feet of glazed window area above ground level per person in rooms occupied by two or more persons;

[6. 5.] For occupancy by no more than four residents in a room. A residence that had a valid license on January 1, 1980, permitting care of more than four residents in specific rooms, will be deemed to be in compliance with this standard; however, the residence may not exceed the maximum number of four residents in any other room in the facility. This exception will not be applicable if the

residence is remodeled or if there is a change of sponsorship.

[~~7. 6.~~] For at least three feet of space between sides and ends of beds that are placed in the same room;

[~~8. 7.~~] That no bedroom shall be used as a corridor to any other room;

[~~9. 8.~~] That all beds shall be placed only in bedrooms; and

[~~40. 9.~~] That household members and staff shall not share bedrooms with residents.

[~~§ 5-6.~~ 22 VAC 40-71-540.] 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 residence with a valid license on January 1, 1980, only residents shall be counted in making the determination unless such residence is subsequently remodeled or there is a change of sponsorship.

1. On each floor where there are residents' bedrooms, there shall be:

- a. At least one toilet for [each] 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 equipped to accommodate more than one person at a time shall be labeled 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 residences where there are 10 or more residents. Bathrooms equipped to accommodate more than one person at a time shall be designated by sex. Sex designation of bathrooms must 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. The following sturdy safeguards shall be provided:

1. Handrails by bathtubs;
2. Grab bars by toilets; and

3. Handrails and stools by stall showers.

These safeguards shall be optional for individuals with independent living status.

[~~§ 5-7.~~ 22 VAC 40-71-550.] Toilet supplies.

A. The residence shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode.

B. Common handwashing facilities shall have paper towels or an air dryer, and liquid soap for hand washing.

[~~§ 5-8.~~ 22 VAC 40-71-560.] Fire safety: compliance with state regulations and local fire ordinances.

A. An adult care residence shall comply with the Virginia Statewide Fire Prevention Code as determined by at least an annual inspection by the [~~Office of the State Fire Marshal~~ appropriate fire prevention official] .

B. An adult care residence shall comply with any local fire ordinance.

[~~§ 5-9.~~ 22 VAC 40-71-570.] Fire plans.

A. An adult care residence shall have a fire plan approved by the [~~Office of the State Fire Marshal~~ appropriate fire prevention official] . The plan shall consist of the following:

1. Written procedures to be followed in the event of a fire. 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 a fire, location of telephones, fire alarm boxes and fire extinguishers, if any. The drawing shall be prominently displayed on each floor of each building used by residents.

B. The telephone numbers for the fire department, rescue squad or ambulance, and police shall be posted by each telephone shown on the fire plan.

NOTE: In adult care residences where all outgoing telephone 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.

C. The licensee or administrator or both and all staff members shall be fully informed of the approved fire plan, including their duties, and the location and operation of fire extinguishers and fire alarm boxes, if available.

D. The approved fire plan shall be reviewed quarterly with all staff and with all residents.

[~~§ 5-10.~~ 22 VAC 40-71-580.] Fire drills.

A. At least one fire drill shall be held each month for the staff on duty and all residents who are in the building at the time of the fire drill [to practice meeting the requirements of the approved fire plan] . 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.;

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2. At least one fire drill shall be held between the hours of 3 p.m. and 11 p.m.; and

3. At least one fire drill shall be held between the hours of 11 p.m. and 7 a.m.

B. Additional fire drills may be held at the discretion of the administrator or licensing specialist and must be held when there is any reason to question whether all residents can meet the requirements of the approved fire plan.

C. Each required drill shall be unannounced.

D. 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 drill. The licensee or administrator shall immediately correct any problems identified in the evaluation.

E. A record of required fire drills shall be kept in the residence 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 comply with [~~the approved fire plan~~ subdivision F 2 of this section] .

F. Fire drills [~~shall be timed and~~] shall include at least the following:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures [or, if evacuation is not required, other procedures as specified in the approved fire plan. This practice shall be timed] ;
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 fire safety procedures as may be required by the facility's approved fire plan.

[~~§ 5-11. 22 VAC 40-71-590.~~] Emergency procedures.

A. An adult care residence shall have written procedures to meet other emergencies, including severe weather, loss of utilities, missing persons and severe injury.

B. The procedures required by subsection A of this section and the approved fire plan shall be discussed at orientation for new staff, for new residents, and for volunteers.

[~~§ 5-12. 22 VAC 40-71-600.~~] Provisions for emergency calls/signaling systems.

A. All adult care residences shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that enables the staff to be readily available to the resident.

B. In residences licensed to care for 20 or more residents under one roof, there shall be a signaling device or intercom or a telephone which terminates at the staff station and permits staff to determine the origin of the signal. 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 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.

1. A written log shall be maintained showing the date and time rounds were made and the signature of the person who made rounds.

2. Logs for the past three months shall be retained.

3. These logs shall be subject to inspection by the department.

[~~§ 5-13. 22 VAC 40-71-610.~~] Telephones.

A. 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.

B. The resident shall have reasonable access to a nonpay telephone on the premises.

[C. Privacy shall be provided for residents to use a telephone.]

[~~§ 5-14. 22 VAC 40-71-620.~~] Smoking.

A. Smoking by residents and staff shall be done only in areas designated by the facility and approved by the State Fire Marshal or local fire prevention authorities. Smoking shall not be allowed in a kitchen or food preparation areas.

B. All designated smoking areas shall be provided with suitable ashtrays.

C. Residents shall not be permitted to smoke in or on their beds. This does not apply to independent living facilities.

D. All common areas shall have smoke-free areas designated for nonsmokers.

PART VI. ADDITIONAL REQUIREMENTS FOR ASSISTED LIVING FACILITIES.

Article 1. General Requirements.

[~~§ 6-1. 22 VAC 40-71-630.~~] Personnel and staffing.

A. The administrator shall be a high school graduate or shall have a General Education Development Certificate (GED) and shall have successfully completed at least two years of post secondary education or one year of courses in human services or group care administration from an accredited college or institution or a department approved curriculum specific to the administration of an adult care residence. The administrator also shall have completed at least one year of experience in caring for adults with mental or physical impairments, as appropriate to the population in care, in a group care facility. The following three exceptions apply:

1. Administrators employed prior to the effective date of these standards who do not meet the above requirement shall be a high school graduate or shall have a GED, or shall have completed at least one full year of successful experience in caring for adults in a group care facility;

2. Licensed nursing home administrators who maintain a current license from the Virginia Department of Health Professions [~~are exempt from this standard~~] ;

3. Licensed nurses who meet the above experience requirements. The requirements in this standard are in lieu of the requirements specified in [~~§-2-2 22 VAC 40-71-60~~] B 4.

B. Any designated assistant administrator as referenced in [~~§-2-2 22 VAC 40-71-60~~] F, [~~i.e., that is~~] acting in place of the administrator for part or all of the 40 hours, shall meet the qualifications of the administrator, or if employed prior to the effective date of these standards, its exception, unless the designated assistant is performing as an administrator for fewer than 15 of the 40 hours referenced in [~~§-2-2 22 VAC 40-71-60~~] F or for fewer than four weeks due to the vacation or illness of the administrator, then the requirements of [~~§-2-2 22 VAC 40-71-60~~] B 4 shall be acceptable.

C. All direct care staff shall have satisfactorily completed, or within 30 days of employment shall enroll in and successfully complete within four months of employment, a training program consistent with department requirements, except as noted in subsections D and E of this section. Department requirements shall be met in one of the following four ways:

1. Registration as a certified nurse aide.
2. Graduation from a [Virginia] Board of Nursing approved educational curriculum from a [Virginia] Board of Nursing accredited institution for nursing assistant, geriatric assistant or home health aide.
3. Graduation from a department approved educational curriculum for nursing assistant, geriatric assistant or home health aide. The curriculum is provided by a hospital, nursing facility, or educational institution not approved by the [Virginia] Board of Nursing, e.g., out-of-state curriculum. To obtain department approval:
 - a. The facility shall provide to the licensing representative an outline of the course content, dates and hours of instruction received, the name of the institution which provided the training, and other pertinent information.
 - b. The department will make a determination based on the above information and provide written confirmation to the facility when the course meets department requirements.
4. Successful completion of department approved adult care residence offered training. To obtain department approval:
 - a. Prior to offering the course, the facility shall provide to the licensing representative an outline of the course content, the number of hours of instruction to be given, the name and professional status of the trainer, and other pertinent information.
 - b. The content of the training shall be consistent with the content of the personal care aide training course of the Department of Medical Assistance Services; a

copy of the outline for this course is available from the licensing representative.

c. The training shall be provided by a licensed health care professional acting within the scope of the requirements of his profession.

d. The department will make a determination regarding approval of the training and provide written confirmation to the facility when the training meets department requirements.

D. Licensed health care professionals, acting within the scope of the requirements of their profession, are not required to complete the training in subsection C of this section.

E. Direct care staff of the facility employed prior to [~~the effective date of these standards~~ February 1, 1996,] shall either meet the training requirements in subsection C of this section within one year of [~~the effective date of these standards~~ February 1, 1996], or demonstrate competency in the items listed on a skills checklist within the same time period. The following applies to the skills checklist:

1. The checklist shall include the content areas covered in the personal care aide training course. A department model checklist is available from the licensing representative.
2. A licensed health care professional, acting within the scope of the requirements of his profession, shall evaluate the competency of the staff person in each item on the checklist, document competency, and sign and date.

F. The facility shall obtain a copy of the certificate issued to the certified nurse aide, the nursing assistant, geriatric assistant or home health aide, or documentation indicating adult care residence offered training has been successfully completed. The copy of the certificate or the appropriate documentation shall be retained in the staff member's file. Written confirmation of department course or training approval shall also be retained in the staff member's file, as appropriate.

G. When direct care staff are employed who have not yet successfully completed the training program as allowed for in subsection C of this section, the administrator shall develop and implement a written plan for supervision of these individuals.

H. On an annual basis, all direct care staff shall attend at least 12 hours of training which focuses on the resident who is mentally or physically impaired, as appropriate to the population in care. This requirement is in lieu of the requirement specified in [~~§-2-4 22 VAC 40-71-80~~] D.

I. Documentation of the dates of the training received annually, number of hours and type of training shall be kept by the facility in a manner that allows for identification by individual employee.

J. Each adult care residence shall retain a licensed health care professional, either by direct employment or on a contractual basis, to provide health care oversight. The licensed health care professional, acting within the scope of

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the requirements of his profession, shall be on-site at least [~~once a month~~ quarterly] and more often [~~if needed~~ if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition]. The responsibilities of the professional [while on site] shall include [at least quarterly] :

1. Recommending in writing changes to a resident's service plan whenever the plan does not appropriately address the current health care needs of the resident.

2. [~~Periodic~~] Monitoring of direct care staff performance of health related activities, including the identification of any significant gaps in the staff person's ability to function competently.

3. Advising the administrator of the need for staff training in health related activities or the need for other actions when appropriate to eliminate problems in competency level.

4. Providing consultation and technical assistance to staff as needed.

5. [~~Each month, directly observing every resident requiring intensive assisted living and any other resident with identified medical or nursing needs, and recommending in writing any needed changes in the care provided or in the resident's service plan. Directly observing every resident whose care needs are equivalent to the intensive assisted living criteria and recommending in writing any needed changes in the care provided or in the resident's service plan. For auxiliary grant recipients receiving intensive assisted living services, the monitoring will be in accordance with the specifications of the Department of Medical Assistance Services.~~]

6. Reviewing documentation [~~as needed and at least every 90 days~~] regarding health care services, including medication and treatment records to assess that services are being provided in accordance with physicians' orders, and informing the administrator of any problems.

7. [~~Each month,~~] Reviewing the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination, and advising the administrator of any concerns.

K. A resident's need for skilled nursing treatments within the facility shall be met by facility employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

[~~§ 6-2. 22 VAC 40-71-640.~~] Resident personal and social data.

Prior to or at the time of admission to an adult care residence, the following information on a person shall be obtained and placed in the individual's record:

1. Description of family structure and relationships;
2. Previous mental health/mental retardation services history, if any [, and if applicable for care or services] ;

3. Current behavioral and social functioning including strengths and problems; and

4. Any substance abuse history [if applicable for care or services] .

[~~§ 6-3. 22 VAC 40-71-650.~~] Resident care and related services.

A. There shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day. The activities shall be designed to meet the specialized needs of the residents and to promote maximum functioning in physical, mental, emotional, and social spheres. This requirement is in lieu of the requirement specified in [~~§ 4-14 22 VAC 40-71-250~~] A.

B. Facilities shall assure that all restorative care and habilitative service needs of the residents are met. Staff who are responsible for planning and meeting the needs shall have been trained in restorative and habilitative care. Restorative and habilitative care includes, but is not limited to, range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

C. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations permitted by physicians' orders.
2. Encouraging residents to achieve independence in the activities of daily living.
3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in activities.
4. Assisting residents to carry out prescribed physical therapy exercises between visits from the physical therapist.
5. Maintaining a bowel and bladder training program.

D. Facilities shall assure that the results of the restorative and habilitative care are documented in the service plan.

E. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

F. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

G. The physician's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

H. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

I. A licensed health care professional, acting within the scope of the requirements of his profession, shall perform an annual review of all the medications of each resident, including both prescription and over-the-counter medications. The results of the review shall be documented, signed and dated by the health care professional, and retained in the resident's record. Any potential problems shall be reported to the resident's attending physician and to the facility administrator. Action taken in response to the report shall also be documented in the resident's record.

Article 2.

Additional Requirements for Assisted Living Facilities Caring for Adults with Mental Illness or Mental Retardation or Who are Substance Abusers.

[~~§ 6.4.~~ 22 VAC 40-71-660.] *Psychiatric or psychological evaluation.*

A. When determining the appropriateness of admission for applicants with serious mental illness, mental retardation or a history of substance abuse, a current psychiatric or psychological evaluation may be needed. The need for this evaluation will be indicated by the UAI or based upon the recommendation of the resident's case manager or other assessor.

B. A current evaluation for an applicant with mental illness or a history of substance abuse shall be no more than 12 months old, unless the case manager or other assessor recommends a more recent evaluation.

C. A current evaluation for a person with mental retardation shall be no more than three years old, unless the case manager or other assessor recommends a more recent evaluation.

D. The evaluation shall have been completed by a person having no financial interest in the adult care residence, directly or indirectly as an owner, officer, employee, or as an independent contractor with the residence.

E. A copy of the evaluation shall be filed in the resident's record.

[~~§ 6.5. Written~~ 22 VAC 40-71-670.] *Services agreement [and coordination] .*

A. The facility shall enter into a written agreement with the local community mental health, mental retardation and substance abuse services board, [or a public or private] mental health clinic, [~~or similar treatment~~] facility or [~~agency~~ agent] to make services available to all residents. This agreement shall be jointly reviewed annually by the adult care residence and the service entity.

[NOTE: This requirement does not preclude a resident from engaging the services of a private psychiatrist or other appropriate professional.]

B. Services to be included in the agreement shall at least be the following:

1. Diagnostic, evaluation and referral services in order to identify and meet the needs of the resident;
2. Appropriate community-based mental health, mental retardation and substance abuse services;
3. Services and support to meet emergency mental health needs of a resident; and
4. Completion of written progress reports specified in [~~§ 6.6~~ 22 VAC 40-71-680] .

C. A copy of the agreement specified in subsections A and B of this section shall remain on file in the adult care residence.

D. For each resident the services of the local community mental health, mental retardation and substance abuse services board, [or a public or private] mental health clinic, rehabilitative services agency, [~~or similar treatment~~] facility or agent shall be secured as appropriate based on the resident's current evaluation.

[~~§ 6.6.~~ 22 VAC 40-71-680.] *Written progress reports.*

A. The facility shall obtain written progress reports on each resident receiving services from the local community mental health, mental retardation and substance abuse services board, [or a public or private] mental health clinic, [~~or a~~] treatment facility or agent [~~in the private sector~~] .

B. The progress reports shall be obtained at least every six months until it is stated in a report that services are no longer needed.

C. The progress reports shall contain at a minimum:

1. A statement that continued services are or are not needed;
2. Recommendations, if any, for continued services;
3. A statement that the resident's needs can continue to be met in an adult care residence; and
4. A statement of any recommended services to be provided by the adult care residence.

D. Copies of the progress reports shall be filed in the resident's record.

[~~§ 6.7.~~ 22 VAC 40-71-690.] *Obtaining recommended services.*

The adult care residence shall assist the resident in obtaining the services recommended in the initial evaluation and in the progress reports.

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Article 3.

Additional Requirements for Assisted Living Facilities Caring for Adults with Dementia/Serious Cognitive Deficits.

[~~§ 6-8.~~ 22 VAC 40-71-700.] Adults with dementia/serious cognitive deficits.

A. The requirements provided in subsection B of this section apply when any resident exhibits behavior indicating a serious cognitive deficit and when the resident cannot recognize danger or protect his own safety and welfare, except as noted in subdivision B [9 12] of this section.

B. If there is a mixed population the requirements apply to the entire facility unless specified otherwise. If there is a [self-contained] special care unit for residents with serious cognitive deficits, the requirements apply only to the special care unit.

1. There shall be at least two direct care staff members in each building at all times that residents are present who shall be responsible for their care and supervision.
2. During trips away from the facility, there shall be sufficient staff to provide sight and sound supervision to all residents.
3. Commencing immediately and within six months of employment, direct care staff shall complete four hours of dementia/cognitive deficit training. This training is counted toward meeting the annual training requirements for the first year.
4. Commencing immediately and within three months of employment, the administrator shall complete 12 hours of dementia/cognitive deficit training. This training is counted toward the annual training requirements for the first year.
5. Curriculum for the dementia/cognitive deficit training shall be developed by a qualified health professional or by a licensed social worker and shall include, but need not be limited to:
 - a. Explanation of Alzheimer's disease and related disorders;
 - b. Resident care techniques, such as assistance with the activities of daily living;
 - c. Behavior management;
 - d. Communication skills; and
 - e. Activity planning.
6. Within the first week of employment, employees other than the administrator and direct care staff shall complete one hour of orientation on the nature and needs of residents with dementia/cognitive deficits.
7. Doors leading to the outside shall have a system of security monitoring, such as door alarms, cameras, or security bracelets which are part of an alarm system, unless the door leads to a secured outdoor area.
8. The facility shall have a secured outdoor area for the residents' use or provide staff supervision while residents are outside.

9. There shall be protective devices on the bedroom and the bathroom windows of residents with dementia [and on windows in common areas accessible to residents with dementia] to prevent the windows from being opened wide enough for a resident to crawl through.

10. The facility shall provide to residents free access to an indoor walking corridor or other area which may be used for walking.

11. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with dementia/cognitive deficits. Examples of environmental precautions include signs, carpet patterns and arrows which point the way; [~~camouflage of exits;~~] and reduction of background noise.

12. This subsection does not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents exhibit behavior indicating serious cognitive deficits, when the resident cannot recognize danger or protect his own safety and welfare. The prospective resident or his personal representative shall be so notified prior to admission.

VA.R. Doc. No. R96-117; Filed November 20, 1995, 1:11 p.m.

Title of Regulation: [~~VR 615-46-02.~~ 22 VAC 40-745-10 et seq.] **Assessment and Case Management in Adult Care Residences.**

Statutory Authority: §§ 63.1-25 and 63.1-173.3 of the Code of Virginia.

Effective Date: February 1, 1996.

Summary:

The 1993 General Assembly enacted legislation (Chapter 957) which set forth requirements for case management services for residents of adult care residences. This legislation also created two levels of care in adult care residences, established the statutory basis for the prohibition of certain medical conditions, specified licensure requirements, and changed the term "homes for adults" to "adult care residences." In response to this legislation, three sets of regulations (assessment, licensure, and auxiliary grant) were published for a public comment period held between December 13, 1993, and February 11, 1994. As a result of public and private concern about parts of the proposed regulations, the 1995 General Assembly enacted legislation (Senate Bill 1010) which includes requirements for assessment for ACR residents and for the administration of the Auxiliary Grant program. This regulation establishes general standards for the assessment of applicants to and residents of adult care residences including information on individuals to be served, level of care criteria, determination and authorization of services, and case management.

Following public comment to the proposed regulation published in August 1995, the following changes were made:

1. As the focus of the regulation is assessment, "case management" is deleted from the title.
2. The process for completion of the uniform assessment instrument has been streamlined. For public pay clients, the short assessment (first four pages of the UAI) must be completed for admission to an ACR when there is a change in the resident's condition, and at the time of the 12-month assessment. If, upon assessment, it is determined that the client is dependent in at least two ADLs or is dependent in behavior, then the full assessment must be completed. For private pay clients, an alternate form has been developed. For private pay individuals, ACR employees with documented training in the completion of the uniform assessment instrument may complete the assessment; the administrator or his designee must approve and sign assessments completed by an employee.
3. The process for case management for auxiliary grant residents has been clarified. Targeted case management will be limited to those clients having multiple needs across multiple providers when this coordination is beyond the scope of the ACR.
4. Clarification is given regarding responsibility for case management. If a case manager is unable or unwilling to provide case management services, and another case manager cannot be found, the local department of social services is the case management agency of last resort.
5. Definition of assessment was added; definitions of functional capacity and qualified case management agency were eliminated. The definitions of "medication administration," "assessor," and "case management" have been modified for clarity.
6. "Independent assessment" is defined as an assessment completed by an entity other than the original assessor.
7. "Entrance to" an ACR is changed to "placement in"; "facility" is changed to "ACR"; "social work/social work supervisor" is changed to "social worker/social work supervisor."
8. The use of asterisks in determining level of care criteria is clarified.
9. In 22 VAC 40-745-80 A 2, "record" is clarified to mean the "record of the ACR resident."
10. The resident appeals section specifies who may appeal an action and describes the appropriate agency to receive appeals.
11. Minor editing and technical changes have been made for clarity.

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

Agency Contact: Copies of the regulation may be obtained from Marjorie Jernigan, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1262.

22 VAC 40-745-10 et seq. Assessment in Adult Care Residences.

[CHAPTER 745.
ASSESSMENT IN ADULT CARE RESIDENCES.]

PART I.
DEFINITIONS.

[§ 1-1. 22 VAC 40-745-10.] Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate [setting level of care] and services.

"Adult care residence (ACR)" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or any portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services (DSS) as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Applicant" means an adult currently residing or planning to reside in an adult care residence.

["~~Arranging for services~~" means the process through which the case manager identifies appropriate adult care residences or other services to meet the needs of the applicant, including level of care, for applicants and recipients of adult residential care.

"Assessment" means a standardized approach using common definitions to gather sufficient information about applicants to and residents of adult care residences to determine the need for appropriate level of care and services.

"Assessor" means the entity specified in this regulation as qualified to perform assessments and authorize service in an

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~~adult care residence [and includes a case manager, a qualified assessor contracting with the Department of Medical Assistance Services, an employee of the ACR having the knowledge, skills, and abilities of a case manager, and an independent physician].~~

"Assisted living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Moderate assistance means dependency in two or more of the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive). Within assisted living, there are two payment levels for recipients of an auxiliary grant: regular assisted living and intensive assisted living as defined in regulations promulgated by the Department of Medical Assistance Services.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an adult care residence with an approved rate.

~~["Care plan" means a standardized, written description of the need or needs which cannot be met by the adult care residence and the case manager's strategy for arranging services to meet that need.]~~

~~"Case management" means [an activity performed by an employee of a public human service agency to locate, coordinate and monitor services for applicants and recipients of the Auxiliary Grants Program and for private pay residents who purchase the service. multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.]~~

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

"Case manager" means an employee of a public human service agency ~~[having a contract with the Department of Medical Assistance Services to provide case management services and who is qualified to perform case management activities who is qualified and designated to develop and coordinate plans of care].~~

"Community-based waiver services" means a service program administered by the Department of Medical Assistance Services under a waiver approved by the United States Secretary of Health and Human Services.

"Consultation" means the process of seeking and receiving information and guidance from appropriate human service agencies and other professionals when assessment data indicate certain social, physical and mental health conditions.

"Department" or "DSS" means the Virginia Department of Social Services.

"Dependent" means, for activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the individual needs the assistance of another person or needs the assistance of another person and equipment or device to safely complete the activity. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the person's behavior is aggressive, abusive, or disruptive.

"Discharge" means the movement of a resident out of the adult care residence.

"Emergency placement" means the temporary status of an individual in an adult care residence when the person's health and safety would be jeopardized by not permitting entry into the facility until requirements for admission have been met. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or by an independent physician or a Virginia adult protective services worker for private pay individuals.

~~["Functional capacity" means the degree of independence with which an individual can perform activities of daily living and instrumental activities of daily living.]~~

"Independent physician" means a physician who is chosen by the resident of the adult care residence and who has no financial interest in the adult care residence, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

~~["Individualized service plan" means the written description of actions to be taken by the adult care residence to meet the assessed needs of the resident.]~~

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, [and] money management ~~[, transportation, shopping, using the telephone, and home maintenance]. [A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.]~~

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven [ADLs activities of daily living] as documented on the uniform assessment instrument. An individual who can participate in any way with the performance of the activity is not considered to be totally dependent.

"Medication administration" means the degree of assistance required to take medications ~~[without dependencies imposed by the environment]~~ and is a part of determining ~~[appropriate setting and services~~ the need for appropriate level of care and services].

~~["Monitoring" means the maintenance of regular contact with the resident, staff of the adult care residence, and community-based service providers to ensure that the services provided are meeting the resident's needs.]~~

"Private pay" means a resident of an adult care facility not eligible for benefits under the Auxiliary Grants Program.

"Public human service agency" means an agency established or authorized by the General Assembly under

Chapters 2 and 3 of Title 63.1, Chapter 24 of Title 2.1, Chapters 1 and 10 of Title 37.1, or Article 5 of Chapter 1 of Title 32.1 of the Code of Virginia, or hospitals operated by the state under Chapters 6.1 and 9 of Title 23 of the Code of Virginia and supported wholly or principally by public funds, including but not limited to funds provided expressly for the purposes of case management.

"Public pay" means a resident of an adult care facility eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services (DMAS) to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home- and community-based [care] waiver program [,] including an independent physician contracting with DMAS to complete the uniform assessment instrument for residents of [the] adult care [residence residences], or any hospital which has contracted with DMAS to perform nursing facility preadmission [screening screenings].

["Qualified case management agency" means an agency or organization which meets the requirements specified in these regulations.

"Relocation" means the movement of a resident from an adult care residence to another adult care residence.]

"Residence" means an adult care residence.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Minimal assistance means dependency in only one activity of daily living or dependency in one or more of the selected [IADLs instrumental activities of daily living]. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes independent living facilities that voluntarily become licensed.

["Selected instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and money management. A person's degree of independence in performing these activities is a part of determining appropriate services and placement.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an auxiliary grant resident of an adult care residence who meets the criteria set forth in 12 VAC 30-50-410 et seq.]

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

"Uniform assessment instrument [(UAI)] " means the [complete] department-designated assessment form. There is an alternate version of the [UAI uniform assessment instrument] which may be used for private pay residents; social and financial information which is not relevant because of the resident's payment status is not included on this version.

"User's Manual: Virginia Uniform Assessment Instrument [(UAI)] " means the department-designated handbook containing [common] definitions and procedures for completing the department-designated assessment form.

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

PART II.

ASSESSMENT [AND CASE MANAGEMENT] SERVICES.

[§-2-4. 22 VAC 40-745-20.] Persons to be assessed.

A. [Upon the effective date of these regulations Effective February 1, 1996], all residents and applicants of ACRs must be assessed using the [UAI uniform assessment instrument].

B. [1. Assessments of private pay residents shall be conducted by a case manager, a qualified assessor, an employee of the ACR who has the knowledge, skills, and abilities of a case manager, or by an independent physician. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager or other qualified assessor, qualified staff of the ACR or an independent private physician may complete the uniform assessment instrument for private pay individuals. Qualified staff of the ACR is an employee with documented training in the completion of the uniform assessment instrument. The administrator or the administrator's designated representative must approve and sign the completed uniform assessment instrument.] When a case manager completes the [UAI uniform assessment instrument], the case management agency may determine and charge a fee for private pay applicants and residents; the fee may not exceed the fee paid by DMAS for public pay applicants and residents.

[2. The ACR must coordinate with the assessor to ensure that the UAI is completed as required.

3. Responsibilities of the case manager for private pay residents requesting the services of a case manager are limited to completing required portions of the UAI.]

C. [Beginning on the effective date of these regulations, all new applicants for the Auxiliary Grants Program shall be assessed For public pay individuals, a uniform assessment instrument shall be completed] by a case manager or other qualified assessor to determine the need for residential or assisted living services.

[D. The ACR must coordinate with the assessor to ensure that the uniform assessment instrument is completed as required.]

[§-2-2. 22 VAC 40-745-30.] Determination of services to be provided.

A. The assessment shall be conducted with the department-designated [UAI uniform assessment instrument] which sets forth a resident's care needs. [The uniform assessment instrument is designed to be a comprehensive, accurate, standardized, and reproducible assessment of individuals seeking or receiving long-term care services. The uniform assessment instrument is comprised of a short

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assessment and a full assessment. The short assessment is designed to briefly assess the individual's need for appropriate level of care and services and to determine if a full assessment is needed. The uniform assessment instrument shall contain the following items: full name of the individual; social security number; current address; date of birth; sex; marital status; racial/ethnic background; education; method for communication of needs; primary caregiver or emergency contact or both; usual living arrangements; problems with physical environmental; use of current formal services; annual income; sources of income; legal representatives; benefits or entitlements received; types of health insurance; performance on functional status which includes ADLs, continence, ambulation and IADLs; physician information; admissions to hospitals, nursing facilities or adult care residences for medical or rehabilitation reasons; advance directives; diagnoses and medication profile; sensory functioning; joint motion; presence of fractures/dislocations; missing limbs or paralysis/paresis; nutrition; smoking history; use of rehabilitation therapies; presence of pressure ulcers; need for special medical procedures; need for ongoing medical/nursing needs; orientation; memory and judgment; behavior pattern; life stressors; emotional status; social history which includes activities, religious involvement; contact with family and friends; hospitalization for emotional problems; use of alcohol or drugs; assessment of caregivers; and an assessment summary.]

[B.] Sections of the [UAI uniform assessment instrument] which must be completed [upon admission] are as follows:

1. The assessment for private pay [residents individuals] shall include the following portions of the [UAI uniform assessment instrument]: name of the individual; social security number; current address; birthdate; sex; marital status; performance on functional status, which includes ADLs, continence, ambulation, IADLs, medication administration, and behavior pattern. In lieu of completing selected parts of the department-designated [UAI uniform assessment instrument], the alternate [two-paged-UAI uniform assessment instrument] developed for private pay applicants and residents may be used.

2. For public pay [residents individuals], the [complete department-designated UAI short form of the uniform assessment instrument] shall be completed [in its entirety]. [If, upon assessment, it is determined that the individual is dependent in two activities of daily living or is dependent in behavior, then the full assessment must be completed.]

[B. C.] 1. The [UAI uniform assessment instrument] shall be completed within 90 days prior to the date of admission to the ACR [-except that .] If there has been a change in the [resident's individual's] condition since the completion of the [UAI uniform assessment instrument] which would affect the admission [to an ACR], a new [UAI uniform assessment instrument] shall be completed [as specified in 22 VAC 40-745-20].

2. When a resident moves to an ACR from another ACR [or a long-term care setting which uses the UAI, and if there is a completed UAI on record, another UAI does

~~not have to be completed~~ a new uniform assessment instrument is not required except that a new uniform assessment instrument shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care or the assessment was completed more than 12 months ago]. [~~The transferring long-term care provider must update the UAI to indicate any change in the individual's condition.~~]

3. In emergency placements, the [UAI uniform assessment instrument] must be completed within seven working days from the date of [entrance placement]. An emergency placement shall occur only when the emergency is documented and approved by a Virginia adult protective services worker or case manager for public pay individuals or by a Virginia adult protective services worker or independent physician for private pay individuals.

[G. D.] The [UAI uniform assessment instrument] shall be completed at least once every 12 months on all residents of ACRs. [UAIs Uniform assessment instruments] shall be completed as needed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. All [UAIs uniform assessment instruments] shall be completed as required in subsection A of this section.

[D. E.] At the request of the ACR, the resident's [legally authorized] representative, the resident's physician, DSS, or the local department of social services, an independent assessment using the [UAI uniform assessment instrument] shall be completed to determine whether the resident's care needs are being met in the [ACR current placement. An independent assessment is an assessment that is completed by an entity other than the original assessor]. The ACR shall assist the resident in obtaining the independent assessment as requested. If the request is for a private pay resident, and the independent assessment confirms that the resident's placement is appropriate, then the entity requesting the independent assessment [may shall] be responsible for payment of the assessment [, if applicable].

[E. F.] The assessor shall consult with other appropriate human service professionals as needed to complete the assessment.

[F. G.] DMAS shall reimburse for completion of assessments and authorization of ACR placement for public pay applicants and residents pursuant to this section [through contractual agreements with qualified assessors. No reimbursement shall be made to any entity that does not have a valid contract with DMAS].

[§ 2.3. 22 VAC 45-745-40.] Discharge.

Discharge is the process that ends the stay in an ACR. [The case manager for public pay residents shall participate with the resident and] Staff of the ACR [in planning must plan] for post-discharge services when the resident is returned to a home-based placement or a nursing facility. [Upon notification by the ACR of the discharge of a public pay resident, the case manager ACR staff] shall notify the [local department of social services] financial eligibility worker in

the jurisdiction responsible for authorizing the auxiliary grant of the date of discharge [and case management, if applicable]. ~~Upon change in level of care or termination of case management services, the case manager shall notify the applicant or resident in writing of the decision, with a copy of the notice to the financial eligibility worker.]~~

[§ 2.4. 22 VAC 40-745-50.] Authorization of services to be provided.

A. The assessor is responsible for authorizing the individual for the appropriate level of care for admission to and continued stay in an ACR.

B. The ACR must be knowledgeable of the criteria for level of care in an ACR and is responsible for discharge of the resident whenever a resident does not meet the criteria for level of care in an ACR upon admission or at any later time.

C. ~~Functional capacity~~ The appropriate level of care] must be documented on the [UAI uniform assessment instrument], completed in a manner consistent with the definitions of activities of daily living and directions provided in the User's Manual: Virginia Uniform Assessment Instrument. ~~[The ratings of functional dependencies on the UAI must be based on the individual's ability to function in a community environment.]~~

[§ 2.5. 22 VAC 40-745-60.] Criteria for residential living.

Individuals meet the criteria for residential living as documented on the [UAI uniform assessment instrument] when [at least] one of the following describes their functional capacity:

1. Rated dependent in only one of seven ADLs (i.e., bathing, dressing, toileting, transferring, bowel function, bladder function, and eating/feeding).
2. Rated dependent in one or more of four selected IADLs (i.e., meal preparation, housekeeping, laundry, and money management).
3. Rated dependent in medication administration.

[§ 2.6. 22 VAC 40-745-70.] Criteria for assisted living.

Individuals meet the criteria for assisted living as documented on the [UAI uniform assessment instrument] when [at least] one of the following describes their capacity:

1. Rated dependent in two or more of seven ADLs.
2. Rated dependent in behavior pattern (i.e., abusive, aggressive, and disruptive).

[§ 2.7. 22 VAC 40-745-80.] Rating of levels of care on the [UAI uniform assessment instrument].

[A.] The rating of functional dependencies on the [UAI uniform assessment instrument] must be based on the individual's ability to function in a community environment.

[B.] The following abbreviations shall mean: [~~I~~ = independent; ~~d~~ = semi-dependent;] D = dependent; and TD = totally dependent. Mechanical help means equipment or a device or both are used; human help includes supervision

and physical assistance. Asterisks (*) [~~are placed on the UAI to~~] denote dependence in a particular function.

1. Activities of daily living.

a. Bathing.

- (1) Without help [(+)]
- (2) Mechanical help only [(≠)]
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Is performed by others* (TD)

b. Dressing.

- (1) Without help [(+)]
- (2) Mechanical help only [(≠)]
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Is performed by others* (TD)
- (6) Is not performed* (TD)

c. Toileting.

- (1) Without help [(+)]
- (2) Mechanical help only [(≠)]
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Performed by others* (TD)
- (6) Is not performed* (TD)

d. Transferring.

- (1) Without help [(+)]
- (2) Mechanical help only [(≠)]
- (3) Human help only* (D)
- (4) Mechanical help and human help* (D)
- (5) Is performed by others* (TD)
- (6) Is not performed* (TD)

e. Bowel function.

- (1) Continent [(+)]
- (2) Incontinent less than weekly [(≠)]
- (3) Ostomy self-care [(≠)]
- (4) Incontinent weekly or more* (D)
- (5) Ostomy not self-care* (TD)

f. Bladder function.

- (1) Continent [(+)]
- (2) Incontinent less than weekly [(≠)]

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(3) External device, indwelling catheter, ostomy, self-care [(H)]

(4) Incontinent weekly or more* (D)

(5) External device, not self-care* (TD)

(6) Indwelling catheter, not self-care* (TD)

(7) Ostomy, not self-care* (TD)

g. Eating/feeding.

(1) Without help [(H)]

(2) Mechanical help only [(H)]

(3) Human help only* (D)

(4) Mechanical help and human help* (D)

(5) Performed by others (includes spoon fed, syringe/tube fed, fed by IV)* (TD)

2. Behavior pattern.

a. Appropriate [(H)]

b. Wandering/passive less than weekly [(H)]

c. Wandering/passive weekly or more [(H)]

d. Abusive/aggressive/disruptive less than weekly* (D)

e. Abusive/aggressive/disruptive weekly or more* (D)

3. Instrumental activities of daily living.

a. Meal preparation.

(1) No help needed [(H)]

(2) Needs help* (D)

b. Housekeeping.

(1) No help needed [(H)]

(2) Needs help* (D)

c. Laundry.

(1) No help needed [(H)]

(2) Needs help* (D)

d. Money management.

(1) No help needed [(H)]

(2) Needs help* (D)

4. Medication administration.

a. Without assistance [(H)]

b. Administered/monitored by lay person* (D)

c. Administered/monitored by professional staff* (D)

[§ 2.8. 22 VAC 40-745-90.] Actions to be taken upon completion of the [UAI uniform assessment instrument],

A. [Public pay individuals.

1.] Upon completion of the [~~rating on the UAI~~ uniform assessment instrument for admission, changes in the individual's approved level of care, or for the 12-month assessment], the case manager or a qualified assessor shall [~~in the case of a public pay resident,~~] forward to the local [department of social services] financial eligibility worker in the [appropriate] agency of jurisdiction [~~where the individual was assessed,~~], in the format specified by the department, the effective date of admission [or change in level of care].

[~~B. 2.] A copy of the [UAI and care plan~~ uniform assessment instrument], a copy of the referral to the financial eligibility worker, and other relevant data shall be maintained in the [ACR resident's] record.

[~~C. The authorization for residential or assisted living must be made by the assessor prior to the placement and must be rescinded by the case manager, DSS, or DMAS at any point that the individual is determined to no longer meet the criteria for residential or assisted living.~~

[~~D. The assessor shall designate the case manager responsible for conducting the periodic reassessment for public pay residents as required in these regulations.~~

3. The 12-month assessment shall be completed by the assessor conducting the initial assessment. If the original assessor is neither willing nor able to complete the assessment and another assessor is not available, the local department of social services where the resident resides following placement in an ACR shall be the assessor.]

[~~E. B.] For private pay residents, the [facility shall coordinate with a case manager, qualified assessor, employee of the ACR who has the knowledge, skills, and abilities of a case manager, or independent physician to [ACR shall] ensure that [reassessments~~ assessments for all residents at admission and at subsequent intervals] are completed as required in [~~these regulations~~ this chapter]. The ACR shall maintain in the [resident's] record a copy of the resident's [UAI uniform assessment instrument] and other relevant data.

[~~§ 2.9. Qualifications of case managers. 22 VAC 40-745-100. Targeted case management for auxiliary grant recipients.]~~

A. [~~A qualified case management agency must have signed an agreement with DMAS to deliver case management services to applicants and recipients of auxiliary grants. Targeted case management shall be limited to those residents who have multiple needs across multiple providers and this coordination is beyond the scope of the ACR. It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an ACR to assess the need for targeted case management services as defined in 12 VAC 30-50-410 et seq.]~~

B. [~~The case management agency shall (i) have procedures for assuring the quality of case management services; (ii) ensure that case managers are competent to perform case management functions; (iii) ensure that the case manager is not the applicant's or resident's financial~~

representative; and (iv) ensure that caseload size shall be adequate. A case management agency must have signed an agreement with DMAS to be reimbursed for the provision of targeted case management services to auxiliary grant recipients.]

C. The local department of social services where the [resident adult] resides, following placement in an ACR, shall be the case management agency when there is no other qualified case management provider willing or able to [complete the UAI provide case management services].

D. A qualified case manager must possess a combination of relevant work experience in human services or health care and relevant education which indicates that the individual possesses the knowledge, skills, and abilities at entry level as defined in [the State Plan for Medical Assistance, Attachment 3.1, Supplement 2 (VR 460-03-3.1102) 12 VAC 30-50-410 et seq.]. This must be documented on the case manager's job application form or supporting documentation or observable in the job or promotion interview. When the provider agency is a local department of social services, case managers shall meet the qualifications for social work/social work supervisor classification as specified in [VR 645-01-90-22 VAC 40-670-10 et seq.]

[E. ~~The case management process shall include assessment using the UAI, care planning, arranging for services, monitoring, and discharge.~~

F. ~~The assessor shall, when the individual meets the criteria for ongoing case management services as defined in the State Plan for Medical Assistance, Attachment 3.1, Supplement 2 (VR 460-03-3.1102), develop a care plan which identifies resident specific goals, objectives, and expected time frames for completion of the arrangement of services that the individual needs and the ACR is not expected to provide. The case manager shall provide ongoing monitoring and shall arrange for services according to this care plan.~~

G. ~~The case manager conducting the initial assessment shall be responsible for the case unless the ACR resident's case is referred to and accepted by another case manager.~~

**PART III.
UNIFORM ASSESSMENT INSTRUMENT.**

§ 3.1. Uniform assessment instrument.

~~The UAI is designed to be a comprehensive, accurate, standardized, and reproducible assessment of individuals seeking or receiving long-term care services and shall contain the following items: full name of the individual; social security number; current address; date of birth; sex; marital status; racial/ethnic background; education; method for communication of needs; primary caregiver or emergency contact or both; usual living arrangements; problems with physical environment; use of current formal services; annual income; sources of income; legal representatives; benefits or entitlements received; types of health insurance; performance on functional status which includes ADLs, continence, ambulation and IADLs; physician information; admissions to hospitals, nursing facilities or adult care residences for medical or rehabilitation reasons; advance~~

~~directives; diagnoses and medication profile; sensory functioning; joint motion; presence of fractures/dislocations; missing limbs or paralysis/pareisis; nutrition; smoking history; use of rehabilitation therapies; presence of pressure ulcers; need for special medical procedures; need for ongoing medical/nursing needs; orientation; memory and judgment; behavior pattern; life stressors; emotional status; social history which includes activities, religious involvement; contact with family and friends; hospitalization for emotional problems; use of alcohol or drugs; assessment of caregivers; and an assessment summary.]~~

**PART [IV. III.]
RESIDENT APPEALS.**

[§ 4.1. 22 VAC 40-745-110.] Resident appeals.

~~Assessors [and case managers] shall advise orally and in writing all applicants [to] and residents of ACRs for which assessment [and or targeted] case management services [or both] are provided of the right to appeal [to DMAS] the outcome of the assessment, [reassessment the 12-month assessment], or determination of level of care. Applicants for auxiliary grants who are denied auxiliary grants because the assessor [or case manager] determines that they do not require the minimum level of services offered in the residential care level have the right to file an appeal with the Department of Social Services under § 63.1-116 of the Code of Virginia. [A determination that the individual does not meet the criteria to receive assisted living services and intensive assisted living services is an action which is appealable to DMAS.]~~

DOCUMENTS INCORPORATED BY REFERENCE

(22 VAC 40-745-50)

User's Manual: Virginia Uniform Assessment Instrument (UAI), Long-Term Care Council, March 1994.

VA.R. Doc. No. R95-115; Filed November 20, 1995, 12:13 p.m.

EMERGENCY REGULATIONS

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-04-28. Regulation Governing the Oxygenation of Gasoline.

Statutory Authority: § 59.1-156 of the Code of Virginia.

Effective Dates: This amendment shall take effect on the day after the date that the United States Environmental Protection Agency ceases to enforce the present provision of the State Implementation Plan for Virginia that requires that oxygenated gasoline be used in Virginia. The Commissioner of Agriculture and Consumer Services, who shall determine when this cessation of enforcement has occurred, shall base his determination solely on the first occurring of the following events: (i) the Administrator of the United States Environmental Protection Agency (or the Administrator's representative) has notified the Governor of Virginia (or the Governor's representative) that the United States Environmental Protection Agency has ceased to enforce the provision of the State Implementation Plan for Virginia that requires that oxygenated gasoline be used in Virginia; or (ii) the United States Environmental Protection Agency has approved a maintenance plan for Virginia that requires that gasoline be oxygenated gasoline only if the air-quality standard for carbon monoxide has been exceeded two or more times in a calendar year at any one of the air-quality-monitoring stations in the Metropolitan Washington, D. C.-Virginia-Maryland Statistical Area.

NATURE OF EMERGENCY AND NECESSITY FOR ACTION WITH RESPECT TO VR 115-04-28, REGULATION GOVERNING THE OXYGENATION OF GASOLINE

The present regulatory action (an amendment to Virginia's regulation requiring the oxygenation of gasoline in certain northern-Virginia jurisdictions) seeks to cure a threat to public safety, and also provides an opportunity potentially to reduce a federally-imposed burden on Virginia, with potential concomitant reductions in the price of gasoline sold in those jurisdictions over the price that might otherwise prevail.¹

That federally-imposed burden requires a number of states to take steps to curb carbon monoxide if those states are part of metropolitan statistical areas where carbon monoxide is a problem pollutant in the air. Certain jurisdictions in northern Virginia (these jurisdictions are Virginia's so-called control area) are part of the Washington, D. C.-Maryland-Virginia Metropolitan Statistical Area, where carbon monoxide has been a problem. During the months of November through February annually (the so-called control period), the control area is required to use so-called oxygenated gasoline, gasoline which contains 2.7 percent oxygen by weight. This

¹Statements contained in this document characterizing gasoline as being potentially less expensive relate to the experiences of the past, in which the production and storage costs of such gasoline have caused the price of gasoline to increase. If this measure is given effect, there is no assurance that gasoline will be less expensive in the future, but rather, that the additional costs associated with the production and storage of oxygenated gasoline would not have to be incurred and thus not included in the price of gasoline. If these costs of production and storage are reduced, perhaps they will be passed on to the ultimate consumer.

added oxygen is a means of reducing carbon monoxide that gasoline otherwise would put in the air. (Other gasolines also contain oxygen, but in amounts different from those contained in (and often at prices lower than) so-called oxygenated gasoline.) The Environmental Protection Agency has indicated that it is likely soon to cease enforcing the present federal requirement (and to cease requiring Virginia to have a corresponding state requirement)², and instead require that the states reserve their regulations as contingency measures only--to be enforced only in the event of the recurrence of a carbon-monoxide problem in those states.

The providers of public-safety services (such as police departments, ambulances, and the military services) in the control area are (among others) subject to the requirement that the gasoline they use be oxygenated gasoline.³ They have had to bear the higher price of oxygenated gasoline, and it is for the purpose of allowing them to use potentially less-expensive gasoline (and to use any savings realized for the actual provision of needed, public-safety services) that this emergency action is being taken.

1. ADDITIONAL COSTS ASSOCIATED WITH OXYGENATED GASOLINE

The figures below for the control period of November 1, 1994 through February 28, 1995 indicate the extra costs that have been associated with oxygenated gasoline:

Total amount of gasoline distributed to tank farms (storage facilities) in the control area	450 million gallons of gasoline
Additional production cost per gallon of gasoline for oxygenated gasoline ⁴	\$0.01 per gallon

²In a letter dated September 29, 1995, to Mr. William F. O'Keefe, Executive Vice President of the American Petroleum Institute, the Environmental Protection Agency (EPA) states that once it has received a request from a state to relieve the state of having to require oxygenated gasoline (except upon the re-emergence of a carbon-monoxide-pollution problem), the Environmental Protection Agency would "make every effort" necessary to act on that request within "four to five days." (Such action would be accomplished by EPA's signing a direct final rule.) Subject to certain conditions stated in its letter, the Environmental Protection Agency states that, "After a direct final rule... has been signed... EPA will provide assurances of no federal enforcement in those cases where a state has established that it will not enforce the oxygenated fuels program this season."

Heretofore, the Environmental Protection Agency has used threats of sanctions (specifically, the withholding of federal funds to states) if states did not adopt requirements that gasoline be oxygenated. This is the first statement known to the Department of Agriculture and Consumer Services in which the Environmental Protection Agency has committed itself to refraining from enforcing the federal requirement that causes the state requirement.

³§ 9-6.14:4.1(C)(5) of the Code of Virginia (a provision of the Administrative Process Act) authorizes an agency to act on a regulation without observing the provisions of regulation-making governed by Article 2 of the Administrative Process Act if an "emergency situation" exists. An "emergency situation" includes "a situation involving an imminent threat to public... safety."

⁴Source: AMOCO.

Historic additional cost for transportation, storage, and marketing of oxygenated gasoline sold in the control area \$0.04 per gallon

Total additional cost for oxygenated gasoline stored in Virginia to be used in the metropolitan statistical area during the months from November through February \$22.5 million

With 47.5%⁵ of this gasoline sold in Virginia (the remainder being sold in the District of Columbia and Maryland), the additional costs in Virginia have been: \$10.688 million dollars yearly

How much of this extra cost was paid by providers of public-safety services? The answer to this question is not to be found in one place, and the agency has had to make enquiries of a number of entities to estimate this cost. The agency's analysis that follows rests on an estimate of the number of vehicles used in public-safety functions.⁶

There are approximately 1,345,148⁷ motor vehicles that the agency has included in its estimate of vehicles subject to the regulation.

The agency calculates, based on the estimates above, that the average additional cost of gasoline for the typical passenger vehicle during the year for oxygenated gasoline is:

$\$10,688,000$ (extra costs of gasoline)/ $1,345,148$ vehicles = $\$7.946$ additional yearly cost for gasoline per typical vehicle

2. POLICE VEHICLES AND AMBULANCES

The agency has determined that there are approximately 1,918 TOTAL POLICE VEHICLES AND AMBULANCES in the jurisdictions that are subject to the regulation.⁸ Although these 1,918 police vehicles and ambulances represent only a small fraction of the vehicles that are subject to the regulation, each such police vehicle and ambulance, on average, (the agency believes) consumed more gasoline than the typical passenger vehicle. The agency estimates

that a typical passenger vehicle is driven one hour per day.⁹ Police vehicles and ambulances, the agency estimates (conservatively, it believes) are driven eight hours per day, or eight times longer each day than the typical passenger vehicle.¹⁰

EXTRA COSTS TO POLICE VEHICLES AND AMBULANCES

Thus, the gasoline used by a police vehicle or ambulance would approximate that of eight passenger vehicles. The total additional costs to police vehicles and ambulances, therefore, would be:

$8 \times 1,918$ vehicles = 15,344 (vehicle equivalence)¹¹

$15,344 \times \$7.946$ additional cost per vehicle = \$121,923

3. FEDERAL VEHICLES ASSIGNED TO PUBLIC SAFETY

Northern Virginia is home to many important military installations and other government public-safety services. The agency estimates conservatively that there are more than 2,000 vehicles assigned to these public-safety providers, exclusive of so-called tactical vehicles.

The agency does not have a clear indication of the extent of the use of these 2,000-plus federal vehicles. In the absence of such indication, the agency has assumed that they are used only to the extent that a typical passenger vehicle would be used, though that assumption is again probably quite conservative, with such vehicles likely being subject to use considerably greater than that given a typical passenger vehicle. Assuming 2,000 federal vehicles, the additional cost to the federal providers of public-safety services in a year's time was:

EXTRA COSTS TO FEDERAL PUBLIC-SAFETY AGENCIES FOR OXYGENATED GASOLINE

$2,000$ vehicles \times $\$7.946$ = \$ 15,892.

4. TOTAL ADDITIONAL COSTS TO PUBLIC-SAFETY FUNCTIONS BECAUSE OF OXYGENATED-GASOLINE REQUIREMENTS:

$\$121,923$ (police vehicles and ambulances)
 $15,892$ (federal vehicles)

GRAND TOTAL \$137,815 in unnecessary additional costs to provide protection to the public safety

⁵Source: Rob Dowd, "Metro DC: Third and Growing Fast," *National Petroleum News* (October, 1995, pp. 104-105).

⁶The agency attempted, without success, to determine the actual consumption of gasoline by the various public-safety providers in the Commonwealth.

⁷This number includes:

-The approximately 1,343,148 actively registered motor vehicles garaged in the jurisdictions that are subject to this regulation. (Federal vehicles used in providing public-safety services are not included in this number, though local police vehicles, fire-department vehicles, and ambulances are.) (Source: Department of Motor Vehicles); and

-The estimated 2,000 federal public-safety vehicles in the jurisdictions that are subject to this regulation.

⁸In estimating conservatively, the agency has not included fire trucks. According to the Department of Motor Vehicles, there are 82 fire trucks in the localities affected. Although older fire trucks often use gasoline, newer fire trucks use diesel fuel.

⁹The typical passenger vehicle is driven 12,458 miles per year. (*American Automobile Manufacturers' Association Facts and Figures* (1994)). This would equate to approximately 35 miles per day. Assuming the vehicle is driven at 35 miles per hour, the vehicle would be driven one hour per day, on average.

¹⁰Several jurisdictions report that at least some of their fleet of police vehicles is driven around the clock—a 24-hour-a-day use of vehicles. In other cases, police vehicles are driven by a police officer during the police officer's shift (typically eight hours) and then parked.

¹¹Another factor that would tend to increase the consumption of gasoline by public-safety vehicles, not accounted for in the agency's calculations, is the extra gasoline consumption occasioned by higher speeds traveled by emergency vehicles in responding to emergencies, and by the larger engines that emergency vehicles typically have. According to the American Automobile Association, an eight-cylinder Chevrolet Caprice uses 6.6 cents worth of gasoline and oil per mile, whereas a four-cylinder Ford Escort uses only 4.8 cents worth of gasoline and oil per mile. (*American Automobile Association, Your Driving Costs*, 1995).

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5. STORAGE CONCERNS AND THE POSSIBILITY OF GASOLINE SHORTAGES

There is one concern (in addition to the additional costs without concomitant benefit that the present regulatory burden imposes) yet to be addressed—namely, that of storage. There is a limited storage capacity for petroleum products in northern Virginia. With other jurisdictions (such as the District of Columbia and Maryland) that rely on petroleum stored in northern Virginia (and with that storage capacity being limited), it is possible that, in attempting to satisfy the demands for various kinds of petroleum products, petroleum companies will not be able to store a sufficient stock of oxygenated gasoline to satisfy the present regulatory requirement, particularly if Virginia is the only jurisdiction in the region that continues to require oxygenated gasoline. If Virginia, on the other hand, is on the same footing as sister states that are in the process of abandoning the present federal requirement, petroleum companies can supply the same kind of gasoline for use in all these jurisdictions, lessening the likelihood of a fuel shortage in northern Virginia.

NOTICE: The agency will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this amendment.

VR 115-04-28. Regulation Governing the Oxygenation of Gasoline.

§ 1. Definitions.

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

"Administrator" means the Administrator of the United States Environmental Protection Agency.¹

"ASTM" means the American Society for Testing and Materials.

"Batch" means any discrete amount of gasoline.

"Blender" means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility.

"Bulk gasoline plant operator" means any person who owns, leases, operates, or controls a plant which is a secondary distribution point for delivering gasoline to local farms, businesses, service stations, and other distribution points, where the total gasoline throughput is 20,000 gallons or less per working day, based on the daily average for the most recent 12-month period.

"Bulk gasoline terminal operator" means any person who owns, leases, operates, or controls a terminal which is a primary distribution point for delivering gasoline to bulk plants, service stations, and other distribution points, where the total gasoline throughput is greater than 20,000 gallons per working day, based on the daily average for the most recent 12-month period.

"Control area" means the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"Control period" means a specified four months out of 12, beginning on November 1 of one year and continuing through the last day of February of the following year.

"Owner" means any person who owns or controls any batch of gasoline.

"Oxygenate" means any combustible substance or substances which, when added to gasoline, increases the amount of oxygen in that gasoline blend.

"Oxygenated gasoline" means gasoline which contains a measurable amount of oxygenate.²

"Person" includes an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.³

"Record" means any document which takes the form of, but is not limited to, a bill of lading, invoice, receipt, commodity manifest, or delivery ticket.

"Retail outlet operator" means any person who owns, leases, operates, or controls any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in a motor vehicle.

"Sell or transfer" means to sell, exchange, ship, receive, or to offer or expose for sale.

"Substantially similar" means "substantially similar" as stated in § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1).

"Terminal operator" means any person who owns, leases, operates or controls a gasoline terminal at which gasoline is sold or dispensed into trucks or other containers for transportation to retail outlets or wholesale purchaser-consumer facilities, and shall include, but not be limited to, any bulk gasoline plant operator and any bulk gasoline terminal operator.

"Ultimate consumer" means any person who purchases gasoline for any purpose other than resale.

"Wholesale purchaser-consumer" means any person who is an ultimate consumer of gasoline and who purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of gasoline into a storage tank or other gasoline container.

"Wholesale purchaser-consumer facility" means any facility at which a wholesale purchaser-consumer stores gasoline in a storage tank or other gasoline container.

² Proposed federal regulation as contained in Federal Register July 9, 1991. The placement of this definition as proposed in the Federal Register would be at 40 CFR § 80.1 (oo).

³ Clean Air Act § 302(e), 42 USC § 7602(e).

¹ Clean Air Act § 302(a), 42 USC § 7602(a).

§ 2. ~~Exception for aircraft~~ Applicability.

A. This regulation shall:

1. Be enforced only at the commencement of the control period that begins at least 180 days after notice by the Commissioner of Agriculture and Consumer Services ("Commissioner") appears in *The Virginia Register of Regulations*, which notice shall state that the Director of the Department of Environmental Quality ("Director") has informed the Commissioner that (because the air-quality standard for carbon monoxide has been exceeded two or more times in a calendar year at any one of the air-quality-monitoring stations in the Metropolitan Washington, D. C.-Virginia-Maryland Statistical Area) the maintenance plan for Virginia requires the enforcement of the regulation; and

2. Cease to be enforced when the conditions of § 2 (A) (1) of this regulation have occurred and the Commissioner receives written notice from the Director that enforcement of the regulation is no longer required to satisfy the maintenance plan. The Commissioner shall publish this written notice in *The Virginia Register of Regulations*.

B. Nothing in this regulation shall apply to any person who sells or transfers any batch of gasoline for use in aircraft.

§ 3. Minimum oxygenate content.

No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer who is within the control area during a control period unless the gasoline contains a minimum of 2.7% oxygen by weight as determined in accordance with § 7 of this regulation.

§ 4. Nature of oxygenates.

A. No person may sell or transfer gasoline to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period unless such gasoline contains an oxygenate which is:

1. Of the type and quality allowed under the federal Clean Air Act;
2. Of a type "substantially similar" under § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1); or
3. Approved through the waiver granted under § 211(f)(4) of the federal Clean Air Act, 42 USC § 7545(f)(4).

B. No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during a control period gasoline that exceeds the maximum oxygen content specified by the "substantially similar" definition of § 211(f)(1) of the federal Clean Air Act, 42 USC § 7545(f)(1), unless such gasoline is approved through the waiver ("the waiver") granted by the administrator under the authority of § 211(f)(4) of the federal Clean Air Act, 42 USC § 7545(f)(1);

No person may sell or transfer to a retail outlet operator or wholesale purchaser-consumer located in the control area during the control period gasoline approved through the

waiver unless the oxygen content of such gasoline is no more than that specified by the waiver.

C. No person may use any oxygenate unless it is "substantially similar" as defined by this regulation, or unless it is approved through the waiver.

§ 5. Record keeping and transfer requirements.

A. Any terminal operator who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline leaving the terminal operator:

1. The volume of gasoline;
2. The class of oxygenate in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate;
3. The oxygen content, if any;
4. A declaration of whether the destination of the batch of gasoline leaving the terminal operator is within the control area or not; and
5. The name and address of the person to whom the terminal operator shipped the batch of gasoline and the date of such shipment.

B. Any blender who ships or causes to have shipped gasoline to or within the control area during a control period shall make a record to be made no later than the time of shipment of the gasoline.

Any person who ships the gasoline to or within the control area during a control period shall carry a copy of the record made by the terminal operator. The blender shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline leaving the blender:

1. The volume of gasoline;
2. The class of oxygenate in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate;
3. The oxygen content, if any;
4. A declaration of whether the destination of the batch of gasoline leaving the blender is within the control area or not; and
5. The name and address of the person to whom the blender shipped the gasoline and the date of the shipment.

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C. Any retail outlet operator who purchases or receives the gasoline and record specified in § 5 A or § 5 B of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the commissioner.

D. Any wholesale purchaser-consumer who purchases or receives the gasoline and record specified in § 5 A or § 5 B of this regulation shall retain the record for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, and shall make such record available for inspection by the commissioner.

E. Any blender or terminal operator who ships or causes to have shipped gasoline destined for the control area during a control period other than to be sold to a retail outlet operator or a wholesale purchaser-consumer shall make a record to be made no later than the time of shipment of the gasoline. Any person who ships the gasoline destined for the control area during a control period shall carry a copy of the record made by the blender or terminal operator. The blender or the terminal operator shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is sooner, a copy of the record and shall make such record available for inspection by the commissioner. Such record shall contain for each batch of gasoline shipped the following information:

1. The date of the shipment of the gasoline;
2. The name and address of the blender or terminal operator shipping or causing to have shipped the gasoline and where the blender or terminal operator is not the person shipping the gasoline, the name and address of the person shipping the gasoline;
3. The name and address of the recipient of the gasoline;
4. The volume of gasoline shipped;
5. The identification of the gasoline as nonoxygenated or oxygenated; and
6. The class of oxygenate used in the gasoline, if any, that is to say whether the gasoline contains an ether or an alcohol based oxygenate, and the oxygen content of the gasoline, if any, required by § 3 of this regulation.

The person shipping the gasoline destined for the control area during a control period shall provide the recipient of the gasoline with a copy of the record required by this subsection E upon delivery of the gasoline to the recipient. The recipient shall retain for one year after the creation of the record or until this regulation ceases to have effect, whichever is the sooner, a copy of the record and shall make such record available for inspection by the commissioner.

§ 6. Gasoline pump labeling.

A. The retail outlet operator shall post a label on any gasoline pump located in the control area from which gasoline is dispensed and which is operated by the retail outlet operator. The retailer shall ensure that the label remains permanently affixed to the gasoline pump. The label shall be worded as follows:

"The following statement is applicable only from November 1 through the last day of February: 'The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.'"

B. The retail outlet operator shall post the label required by § 6 A of this regulation in block letters of no smaller than 20-point bold type, in a color contrasting with the background. The label shall be placed in the upper two-thirds of the front panel of the gasoline pump on the vertical surface of the same side as the price and gallonage or quantity display of the gasoline pump in a position plain and conspicuous from the driver's position.

C. The retail outlet operator shall also label the pump with:

1. The brand name, trademark or trade name of the motor fuel it contains;
2. The grade, blend or mixture of the motor fuel it contains;
3. The octane... rating of the motor fuel it contains; and
4. If the product contains one percent or more ethanol or methanol, information identifying the kind of alcohol and the percentage of each at the time of blending, in letters not less than one inch in height.⁴

§ 7. Sampling, testing, and oxygen content calculations.

A. Sampling methodologies used by the commissioner to determine compliance with this regulation shall be those set forth in Appendix D, 40 CFR Part 80, which is hereby adopted by reference.

B. Determination by the commissioner of the oxygenate and its weight and volume in gasoline shall be in accordance with test method ASTM D 4815-89 as set forth in ASTM specification D 4814 or other methods developed or approved by the United States Environmental Protection Agency.

C. Oxygen content shall be calculated by the commissioner by multiplying the mass concentration of each oxygenate in gasoline by the oxygen molecular weight contribution of the oxygenate. All volume measurements shall be adjusted to 60 degrees Fahrenheit. For the purpose of calculating oxygen content, the following oxygen molecular weight contributions shall be used:

Oxygenate	Oxygen Mass Fraction	Relative Density 60/60°F
Methyl Alcohol	0.4993	0.7963
Ethyl Alcohol	0.3473	0.7939
n-Propyl Alcohol	0.2662	0.8080
Isopropyl Alcohol	0.2662	0.7899
n-Butyl Alcohol	0.2158	0.8137
Isobutyl Alcohol	0.2158	0.8058

⁴ From § 59.1-167 A of the Code of Virginia.

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sec-Butyl Alcohol	0.2158	0.8114
tertiary-Butyl Alcohol	0.2158	0.7922 ⁵
Methyl Tertiary-Butyl Ether	0.1815	0.7460
Ethyl tertiary-Butyl Ether	0.1566	0.7452
tertiary-Amyl Methyl Ether	0.1566	0.7752
tertiary-Hexyl Methyl Ether	0.1377	0.7860
Dilso propyl ether	0.1566	0.7300

D. Oxygenated gasoline shall consist of a single homogenous mixture, presenting no indication of phase separation when tested by the commissioner in accordance with the test method described in Annex A3 of ASTM Specification D-4814.

1. -8°C (17°F) during the month of January.
2. -7°C (19°F) during the month of February.
3. -3°C (26°F) during the month of March.
4. 3°C (37°F) during the month of April.
5. 9°C (48°F) during the month of May.
6. 10°C (50°F) during the months of June, July, August, and September.
7. 4°C (39°F) during the month of October.
8. -2°C (28°F) during the month of November.
9. -7°C (19°F) during the month of December.

§ 8. Compliance and enforcement.

A. Any retail outlet operator or wholesale purchaser-consumer will be deemed in compliance with the requirements of this regulation during a transitional period comprising the first 10 days of the control period, provided that for all deliveries of gasoline during the five days immediately preceding the control period the gasoline delivered to that retail outlet operator or wholesale purchaser-consumer complies with the minimum oxygenate content specified by § 3 of this regulation.

B. Any retail outlet operator or wholesale purchaser-consumer who purchases or receives, and offers for sale, or dispenses gasoline found not to be in compliance with the requirements of this regulation will be subject to having such gasoline ordered off sale or removed from use by the commissioner. After such ordering off sale or removal from use, the retail outlet operator or wholesale purchaser-consumer may:

1. Re-offer for sale gasoline that has been ordered off sale or removed from use, provided that prior to such re-offering for sale such gasoline has been blended by any person with additional oxygenates sufficient to comply with the minimum oxygenate content specified by § 3 of this regulation, and provided that prior to such re-offering for sale the sampling taken by the commissioner meets

the minimum oxygenate content specified by § 3 of this regulation;

2. Sell or transfer gasoline for use outside the control area that has been ordered off sale or removed from use, provided that the retail outlet operator or wholesale purchaser-consumer complies with the record keeping requirements of § 5 C (in the case of the retail outlet operator) and § 5 D (in the case of the wholesale purchaser-consumer) of this regulation, and provided that prior to the sale or transfer the retail outlet operator or wholesale purchaser-consumer provides the commissioner with an affidavit stating that the retail outlet operator or the wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline; or

3. Have gasoline that has been ordered off sale or removed from use released and returned to the retail outlet operator or wholesale purchaser-consumer by the commissioner, provided that prior to such release the retail outlet operator or wholesale purchaser-consumer provides the commissioner with an affidavit stating that the retail outlet operator or wholesale purchaser-consumer will not sell or transfer the gasoline in or to the control area during the control period, and also stating the proposed disposition of the gasoline.

Approved:

/s/ J. Carlton Courter III
Commissioner
Department of Agriculture and Consumer Services
Date: October 13, 1995

/s/ Robert W. Lauterberg
Director
Department of Planning and Budget
Date: November 1, 1995

/s/ Robert T. Skunda
Secretary of Commerce and Trade
Date: November 1, 1995

/s/ George F. Allen
Governor
Date: November 13, 1995

Filed With:

Jane D. Chaffin for
E. M. Miller, Jr.
Acting Registrar of Regulations
Date: November 14, 1995

VA.R. Doc. No. R96-112; Filed November 14, 1995, 4:33 p.m.

⁵ Extrapolated, below freezing temperature.

STATE CORPORATION COMMISSION

REGISTRATION PROCEDURES FOR PERSONS SUBJECT TO THE VIDEO PROGRAMMING EXCISE TAX

The General Assembly has authorized counties, cities, and towns to levy a video programming excise tax. Act of April 6, 1995, ch. 751, 1995 Va. Acts 1295, codified as Va. Code Ann. §§ 58.1-3818.1 to -3818.7 (Supp. 1995). Video programming, as defined in Section 58.1-3818.2, means "video and/or information programming provided by, or generally considered comparable to programming provided by, a cable operator." Section 58.1-3818.3(A) authorizes localities to impose a video programming excise tax on "any person that sells video programming to end-user subscribers located within the Commonwealth by any means of transmission other than wireless or direct-to-homes satellite transmission, or provides such end-user subscribers with access to video programming by any means of transmission, other than wireless or direct-to-home satellite transmission, and that is not otherwise subject to local fees or taxes (other than generally applicable taxes) on the gross receipts received from the provision of cable service or video programming services to customers in such local jurisdiction." Persons subject to this tax are required by Section 58.1-3818.3(G) to register with the State Corporation Commission.

The Director of the Public Service Taxation Division shall have responsibility for registration of persons subject to a video programming excise tax in accordance with the procedures we establish by this memorandum.

Registration shall be by letter addressed to the Director, Public Service Taxation Division, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. As an alternative to mailing, letters may be delivered to the Director, Public Service Taxation Division, State Corporation Commission, Tyler Building, Fourth Floor, 1300 East Main Street, Richmond, Virginia. Only originals of registration letters including all information will be accepted by the Director of the Public Service Taxation Division. Facsimile or electronic medium transmissions will not be accepted for registration.

The letter of registration shall include the following information.

Name

The registrant shall provide its complete name. For a corporation, the registrant shall provide its name as it appears in its articles of incorporation or, in the case of a foreign corporation, its certificate of authority to transact business issued by the Commission. For a limited liability company or partnership, the registrant shall provide the name appearing on the documents forming the entity. In addition, a registrant shall provide any assumed or fictitious name under which it transacts business in the Commonwealth of Virginia.

Business Address and Contact Person

The registrant shall provide the complete mailing address and street address of a business office and the full name, title, and telephone number, including Area Code, of a person who may be contacted about compliance with the video programming excise tax.

Jurisdictions Served

The registrant shall identify all Virginia counties, cities, and towns in which it provides video programming service.

Signature

The registration letter must be legible and be signed by an officer, partner, or employee authorized to sign state tax returns.

Any modifications or amendments to these registration procedures will be by subsequent memorandum from the Commission. This memorandum and any subsequent memoranda shall be published in the Virginia Register.

Dated this 9th day of November, 1995.

/s/ Preston C. Shannon
Chairman

/s/ Theodore V. Morrison, Jr.
Commissioner

/s/ Hulihan Williams Moore
Commissioner

VA.R. Doc. No. R96-110; Filed November 13, 1995, 11:34 a.m.

BUREAU OF INSURANCE

November 9, 1995

ADMINISTRATIVE LETTER 1995-11

TO: All Insurers Licensed To Write Life Insurance Or Annuities in Virginia
All Insurers Licensed To Write Property and Casualty Insurance in Virginia

RE: Synthetic Guaranteed Investment Contracts

Several Synthetic Guaranteed Investment Contract filings have been submitted to the Life and Health Division of the Bureau of Insurance. These are contracts between an insurance company and a pension plan sponsor in which the insurance company guarantees to pay the book value of the assets supporting the contract when benefit payments are required to be made to plan participants. Ownership of the assets is retained by the plan sponsor. The assets may be managed by the insurer or by an independent investment manager.

These filings raised several issues which have been reviewed by the Bureau of Insurance. It has been determined that these types of contracts are not insurance, but that they can be considered as an unregulated activity incidental to the business of insurance. As such, there is no statutory prohibition against an insurer's marketing Synthetic Guaranteed Investment Contracts. In view of this, Synthetic Guaranteed Investment Contract forms should not be submitted to the Bureau of Insurance. If these forms are submitted, they will be returned to the insurer without action being taken.

Questions regarding this administrative letter should be directed to the Forms and Rates Section, Life and Health Division.

/s/ Steven T. Foster
Commissioner of Insurance

VA.R. Doc. No. R96-113; Filed November 15, 1995, 4:50 p.m.

November 16, 1995

ADMINISTRATIVE LETTER 1995-12

TO: All Insurers, Health Services Plans, and Health Maintenance Organizations Licensed To Write Accident and Sickness Insurance in Virginia

RE: Participation in the Primary Small Employer Market for Health Insurance in Virginia

Insurance Regulation No. 46 requires that, effective October 28, 1995, all Insurers, Health Services Plans and Health Maintenance Organizations (HMOs) transacting business with Primary Small Employers (2-25 eligible employees) be able to offer and make available to such Primary Small Employers an Essential Health Benefit Plan and a Standard Health Benefit Plan. These plans must be available on a policy form approved by the Virginia State Corporation Commission's Bureau of Insurance, as being in compliance with Article V, Chapter 34, Title 38.2 of the Code of Virginia, as well as with Insurance Regulation No. 46.

Insurers, Health Services Plans and HMOs that either have not registered to participate in the small employer market as required by § 38.2-3431 D 9 a of the Code of Virginia, or have not received approval of policy forms that provide an Essential Health Benefit Plan and a Standard Health Benefit Plan are prohibited from marketing health insurance to Primary Small Employers after October 28, 1995.

Many insurers who registered to participate in this market either have not filed policy forms or have filed them too late to have them approved by October 28. These insurers are encouraged to have the forms approved as promptly as possible so that they may participate in the Primary Small Employer market in Virginia. Insurers who have not notified the Bureau of Insurance of their intent to participate in or not participate in this market are reminded to do so immediately; and, if they elect to participate, to develop, file, and receive approval of Essential Health Benefit Plan and Standard Health Benefit Plan forms before transacting further business in this market.

Questions regarding this Administrative Letter should be directed to:

Robert L. Wright, III
Principal Insurance Analyst
State Corporation Commission
Bureau of Insurance - Life and Health Division
Post Office Box 1157
Richmond, VA 23218
Telephone: (804) 371-9586 FAX: (804) 371-9944

/s/ Steven T. Foster
Commissioner of Insurance

VA.R. Doc. No. R96-114; Filed November 15, 1995, 4:50 p.m.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-SEVEN (95)

VIRGINIA'S FIFTY-SECOND INSTANT GAME LOTTERY;
"POKER," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's fifty-second instant game lottery, "Poker." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: October 13, 1995

VA.R. Doc. No. R96-107; Filed November 9, 1995, 10:51 a.m.

DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (95)

VIRGINIA'S FIFTY-THIRD INSTANT GAME LOTTERY;
"FOOTBALL FEVER," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's fifty-third instant game lottery, "Football Fever." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: October 25, 1995

VA.R. Doc. No. R96-108; Filed November 9, 1995, 10:51 a.m.

DIRECTOR'S ORDER NUMBER TWENTY-NINE (95)

VIRGINIA'S INSTANT GAME LOTTERY; "HOLIDAY CASH FOR LIFE," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006 A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 403), "Holiday Cash for Life." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: November 6, 1995

VA.R. Doc. No. R96-109; Filed November 9, 1995, 10:51 a.m.

The LEGISLATIVE RECORD
Volume 5 Number 6 November 1995

Published by the Virginia Division of Legislative Services

**Energy Preparedness
Subcommittee of the Virginia
Coal and Energy Commission**

October 16, 1995, Richmond

The subcommittee met to receive information about the Ozone Transport Assessment Group (OTAG) and to consider proposed legislation that requires legislative approval for Virginia's participation in any interstate ozone-reduction agreement advanced by OTAG. The subcommittee also received an update on the proposed allocation of home heating assistance grant dollars to the state's weatherization program.

Weatherization

The subcommittee was advised that its chairman, at the request of the full Coal and Energy Commission, had in September requested a formal opinion of the Attorney General concerning whether the Department of Social Services must amend its Low Income Home Energy Assistance Program (LIHEAP) regulations through the Administrative Process Act before \$1.4 million of LIHEAP's expected federal grant of \$18 million can be reallocated to the Weatherization Assistance Program (WAP)—an allocation permitted by federal law. The reallocation issue has been followed closely by this subcommittee. The subcommittee learned that although some funding has been provided from LIHEAP for home heating system repairs in conjunction with "crisis assistance" programs, at this time—and, perhaps, pending the receipt of the Attorney General's opinion—no money has been allocated to WAP for basic weatherization. The subcommittee will continue to monitor this issue.

OTAG

The Virginia Center for Energy and Economic Development (CEED) appeared before the commission at its August meeting in Blacksburg to brief members on developments related to ozone-producing emissions. CEED representatives told the commission that the U.S. Environmental Protection Agency (EPA) is coordinating the formulation of an interstate ozone reduction agreement whose emissions reduction standards are likely to exceed the stringency of those imposed by the

1990 Clean Air Act amendments. The mechanism for developing this interstate agreement is OTAG, currently comprised of 35 member states, including some states with EPA-designated ozone nonattainment areas and some without.

CEED's spokesman told the commission that the emissions reduction measures under consideration by OTAG are premised on questionable scientific assumptions and data. CEED contends that these measures, including mandates for further reducing stationary source (e.g., power plants) emissions, will reduce ozone only slightly while imposing staggering costs on business and industry.

To address these concerns, CEED asked the commission to support legislation conditioning Virginia's participation in any interstate ozone agreement on General Assembly review and approval, following a study of the environmental and economic impact of any such agreement by a designated state agency. This legislative proposal was assigned to the Energy Preparedness Subcommittee for its review and recommendations. The subcommittee invited representatives from OTAG, CEED, and Virginia's Department of Environmental Quality (DEQ) to present their views on the proposal.

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OTAG's Perspective

Bharat Mathur, Chief of the Illinois Environmental Protection Agency's Bureau of Air, appeared before the subcommittee on behalf of OTAG. He is an assistant to OTAG's chairman, who heads the OTAG Policy Decision Group, composed of member states' environmental commissioners and two U.S. EPA directors. Mathur heads up that group's Advisory Panel.

Mathur summarized OTAG's background and purpose. The federal Clean Air Act designated various regions throughout the U.S. as "nonattainment areas" for ozone. The 1990 amendments required states with these areas to submit attainment demonstrations by November 1994. A 1995 EPA memo provided to the subcommittee showed that for many states—perhaps most—meeting this deadline was not feasible. The states' difficulties resulted in large part from the complexity of upwind and downwind flows of ozone and ozone precursors (nitrous oxide and volatile organic compounds). These complex wind patterns are of great interest to nonattainment areas where ozone problems may be caused, in some part, by emissions transported into nonattainment areas from remote emissions sites. To help states address this issue in working toward ozone attainment, the EPA approved the formation of OTAG to study interstate ozone movement. The EPA took this action as an alternative to imposing sanctions on those states currently unable to demonstrate ozone-reduction attainment.

OTAG will coordinate a two-year process (beginning in 1995 and ending in 1996) in which states and the EPA will assess and refine regional emissions control strategies focusing on "ozone transport," defined as the transmission of ozone and its precursors from one region to another via large-scale air movements, or air currents. Mathur furnished diagrams of air flow movements showing that some of Chicago's ozone problems, for example, may be directly linked to airborne transport of emissions originating in states along the East Coast.

OTAG is using computer modeling to study the causes and consequences of ozone transport. The results will be used to develop a consensus plan (agreed to by OTAG member states and the EPA) for additional emissions reductions on local, regional, and national levels. The consensus envisioned by the EPA will require agreements between OTAG states—some of them without nonattainment areas—and the EPA to implement emissions-reduction programs that will be in addition to those required by the 1990 amendments. Thus, under such agreements, states contributing to ozone problems via ozone transport into nonattainment areas would reduce their emissions, thus assisting states with nonattainment areas to satisfy their ozone-reduction obligations under the 1990 Clean Air Act amendments.

If, however, this state-EPA consensus cannot be achieved by the end of 1997, the EPA intends to use its authority under the 1990 amendments to ensure that the reductions established by the 1990 legislation are met. As authorized by §§ 110 and 126 of the 1990 amendments, this enforcement authority includes EPA suits against states failing to demonstrate ozone-reduction

attainment. These states, in turn, can sue states whose emissions are contributing to nonattainment through ozone transport.

Mathur stated that the OTAG end product will be a recommendation to the EPA addressing ozone transport and that OTAG's leadership has no preconceived notion of what that recommendation will be. Currently, one OTAG work group is compiling state emissions inventories for the year 1990 and anticipated emissions inventories for future years. Another work group will use these inventories, along with information about meteorological conditions during peak ozone episodes in 1988, 1991, 1993, and 1995, to model the effect that various emissions controls might have on ambient ozone concentrations. Another work group is examining the potential for a nitrous oxide allowance trading program—similar to the sulfur dioxide program authorized by the 1990 amendments.

Turning to CEED's legislative proposal, Mathur agreed that legislative review of interstate ozone reduction agreements should occur. However, Mathur noted, the timing of such a review is a critical matter. Responding to CEED's criticisms of the scientific assumptions underlying OTAG's modeling process and potential emissions control measures, Mathur stated that OTAG's use of available emissions and related data in the modeling process is scientifically sound.

CEED Comments

CEED, represented by Eugene Trisko, told the subcommittee that the annual cost of the emissions controls currently under consideration by OTAG is likely to exceed \$5 billion in direct costs to utilities. Trisko challenged the OTAG's utilization of 1988 ozone measurement data in its modeling. Graphs furnished by Trisko showed that days above the 120 parts-per-billion threshold (the federal ozone standard for nonattainment) along the East Coast in 1993-1995 were less than half those indicated in 1988 (20 versus 40+). This, Trisko stated, suggests that the continuing implementation of the Clean Air Act is having significant impact in reducing ozone. Moreover, EPA's computer modeling, to date, suggests that the controls under consideration would reduce ozone in the Northeast by only 6 to 9 parts per billion a few days each year.

CEED reemphasized the basis for its legislative proposal. Such legislation, Trisko said, should ensure a thorough study of the economic impacts of interstate ozone agreements before state environmental protection agencies (such as Virginia's DEQ) are authorized to sign on. These studies should, he proposed, focus on employment impacts, economic development, potentially higher utility rates, statewide business competitiveness, and potential risk of devaluing utility assets.

DEQ Comments on OTAG

DEQ representative Mike McKenna told the subcommittee that DEQ does not view its participation in OTAG as entirely voluntary. He characterized the OTAG process as "coercive,"

and questioned the wisdom of an OTAG leadership structure that, to date, includes no state legislators. Furthermore, he challenged the practical use of the EPA's ozone measurement methodology. The 120 parts-per-billion ozone nonattainment threshold, McKenna said, is tied to a one-hour average. Since long-term ozone exposure creates the greatest health risk, the average should be computed over a larger number of hours to obtain a more meaningful assessment. According to McKenna, DEQ would like to see more cost-benefit analyses as part of the OTAG process.

Subcommittee Action

The subcommittee will continue its examination of the CEED proposal and directed its staff to incorporate CEED's proposal into a legislative draft to be reviewed at the subcommittee's next meeting.



The Honorable James F. Almand, *Chairman*
Legislative Services contact: Arlen Bolstad

HJR 615: Subcommittee Studying Procedures to Identify and Fund State Mandates on Local Governments

October 12, 1995, Richmond

At its second meeting, the subcommittee continued to examine how other states identify, assess, and restrict the introduction and consideration of legislation imposing unfunded local mandates. Also, the subcommittee revisited a newly enacted Virginia statute requiring first day introduction of any bill determined to have a local fiscal impact.

State Approaches to Mandate Legislation

As directed by the subcommittee, staff conducted a survey of the states, asking legislative personnel with expertise in intergovernmental relations to identify how mandate legislation is treated differently from ordinary legislation. Twenty-seven states responded to the survey prior to the meeting. Six states (Delaware, Mississippi, Nebraska, New York, North Carolina, and Wyoming) claimed that local mandate concerns had not prompted their legislatures to adopt any special procedures. The remaining states reported using the following procedures to identify and deter the introduction and consideration of unfunded mandate legislation:

■ **Reimbursement and funding requirements.** Thirteen states reported having constitutional or statutory provisions requir-

ing them to partially or fully fund additional activities and services for localities. However, these states noted that several types of mandates are often exempted from the funding requirements, including mandates that are (i) federally required, (ii) imposed on the public and private sector equally, (iii) approved by a supermajority, (iv) requested by the local agency affected, or (v) passed to implement provisions of the state constitution.

■ **Fiscal analysis.** Almost all states responded that they prepare local fiscal impact statements routinely for bills determined to have a local fiscal impact. Responsibility for determining whether a bill will require a local fiscal impact varies among the states and may include the patron of the measure, a chairman of a standing committee, the legislative drafting council, the legislative budget office, or the executive budget office.

■ **Post review of mandate legislation.** Seven states reported that they review mandate legislation after enactment, typically upon the request of an affected locality seeking reimbursement or suspension of an unfunded mandate. Governmental entities designated by the states to hear localities' claims include legislative standing committees, independent mandate commissions, and executive agencies responsible for implementing the mandate.

Staff Analysis of §§ 30-19.03 and 30-19.03:01

As provided in § 30-19.03, the Division of Legislative Services (DLS) identifies and refers to the Commission on Local Government all introduced bills that are suspected of creating an additional net expenditure on localities. A 1995 amendment to this section provides that these bills must be filed on or before the first day of the legislative session. Any bill filed after the first day cannot be considered, unless it is filed in accordance with the rules of the General Assembly.

Staff analysis of the first day introduction requirement prompted discussion about the application of the statute. Staff told the subcommittee that some local impact bills may not be offered or identified by the first day of the session because the impact is not self-evident. Also, no formal procedure is set forth in the statute to determine if an amended bill creates a local fiscal impact. Members agreed that the statute needed to be revised and a mechanism developed to provide legislators with information on proposed mandates without unduly burdening the legislative process.

Next Meeting

For the next meeting, the subcommittee asked staff to conduct a follow-up interview with the surveyed states to determine if any procedures reported were effective in controlling unfunded local mandates. Also, the subcommittee asked staff to gather information from the Virginia localities, where available, on the cost of state mandates.



The Honorable W. Roscoe Reynolds, *Chairman*
Legislative Services contact: Ginny Edwards

HJR 437: EMS Governance and Training Issues

October 23 and November 14, 1995,
Richmond

During the legislative interim, the Joint Subcommittee Studying Certain Aspects of Emergency Medical Services (EMS) Governance and Training Issues has held several meetings, including five public hearings throughout the state. At its organizational meeting on July 10, the subcommittee heard reports from the staff and the Office of Emergency Medical Services. The staff advised the members concerning the status of the EMS system in Virginia, current federal and state laws and regulations governing service delivery and training, and the issues which gave rise to and the objectives of the study. Representatives of the State Health Department's Office of Emergency Medical Services briefed the joint subcommittee on the Two-for-Life Fund, EMS training programs, and the status of the EMS regulations review, pursuant to Executive Order 15 (1994).

Virginia's EMS System

The Board of Health is responsible for setting standards for licensure of ambulance services and certification of pre-hospital personnel and for administering, through its Office of Emergency Medical Services, a comprehensive, coordinated emergency medical care system. Regional EMS councils and the Virginia Rescue Squad Assistance Act were created to facilitate the delivery of services at the local level. Today, as a result of the need for the development of a statewide air medical evacuation system, medevac coverage is available in all areas of the Commonwealth.

A major initiative in state financing of the emergency medical services system was taken in 1983 with the creation of the One-for-Life legislation, in which the motor vehicle registration fee was increased by \$1.00, with the increase dedicated to financing emergency medical and rescue services in Virginia. In 1990, the Two-for-Life Fund was enacted by the General Assembly, which increased the motor vehicle registration fee to \$2.00, with the increase again dedicated to financing emergency medical and rescue services. As a result of recommendations of a previous study of the EMS system, the following were implemented: funding for a public awareness program, technical assistance workshops for local government officials, management training workshops for EMS agencies and revision of the training programs to incorporate continuing education, appropriate analysis of test results and feedback to agencies, special training programs for Advanced Life Support in rural areas, and the extension of the recertification period from three years to four years for first responders and emergency medical technicians (EMTs).

Virginia was the site of the nation's first all-volunteer rescue squad in Roanoke in 1928, and has the largest all-volunteer EMS system in Virginia Beach. The Commonwealth is one of only two

states that have a complete statewide trauma care system and is the only state that offers a grant program solely for the recruitment and retention of EMS personnel and the dissemination of public information. The state's peer support, technical assistance, and training programs are acclaimed as some of the most innovative in the nation. The emergency medical services system in Virginia includes 34,958 certified volunteer and paid professionals who staff 672 licensed EMS agencies.

Certification and licensure at all levels are provided at no cost to EMS personnel and agencies, and the continuing education and recertification system is recognized nationally as a model program. Since 1989, direct state grant funding for emergency medical equipment, training, recruitment, and retention has dramatically increased. A mini-grant was established which offers \$100,000 each year in non-matching funds to benefit volunteer EMS agencies. In 1994, \$2.5 million was returned to localities through the Two-for-Life Fund, \$3.1 million was awarded through the Rescue Squad Assistance Funds, and \$280,534 was awarded for advanced life support training.

Issues

Although Virginia has an excellent EMS system, disagreement over the training, staffing, and funding of the system has continued. Recently, controversy has occurred within the EMS community concerning the rigor and frequency of and access to necessary training, and the governance of the emergency medical system, particularly the size, composition, and role of the State Emergency Medical Services Advisory Board. The joint subcommittee was briefed on the following issues at the center of the controversy.

EMS Training. The Commonwealth's emergency medical personnel consist of volunteers and paid professionals who are expected to obtain the requisite skills for rendering emergency medical care through extensive training programs and to upgrade their skills regularly via the certification and recertification process. Although training is essential to the viability of the emergency medical services system, some EMS volunteers feel that the training requirements are too demanding for people who are volunteering their services.

Emergency Medical Services Advisory Board. The advisory board is composed of 37 members who represent nearly every constituency, organization, discipline, and group related to or interested in the delivery of emergency medical services. In the view of some persons, the size and composition of the board makes it difficult to be responsive to the various concerns of the EMS community, to reach consensus, and to focus on the priority of effective emergency care delivery to patients. In addition, questions have been raised concerning the efficacy of an advisory board to the State Board of Health, versus a policy board with regulatory oversight for the EMS system. Decentralization has been suggested to facilitate more local and regional control for the system. A year-long study was undertaken by a committee appointed by the advisory board concerning issues related to its structure. In May of this year, consensus was

reached by the advisory board that its membership be reduced to 23.

Adequacy of EMS Services. Although certain densely populated areas have implemented paid or municipally operated emergency medical services, the majority of rural and many urban areas are still served primarily by volunteer squads. However, because of high speed travel, a mobile society, and the advent of new and continuing outbreaks of chronic and serious social and health conditions among the population, even in rural areas, there is an increased need for available and accessible emergency medical services.

Two-for-Life Fund and Related Funding Issues. Twenty-five percent of all Two-for-Life funds collected on motor vehicles registered in local jurisdictions are returned to the locality. Although additional funds were provided in recent years for emergency medical services, disagreement continues on the proper and most appropriate use of the funds.

Review of EMS Regulations. Concerns raised in this area relate to the scope of the regulations, the centralized control of the EMS system, and the potential effect of streamlining the EMS regulations on the effectiveness and efficiency of the system, and ultimately on pre-hospital patient care.

Laws Governing Emergency Medical Services. Virginia laws governing the EMS system are located primarily in two articles of Title 32.1. Because other statutes critical to a comprehensive review of the EMS system interact with these primary laws, staff proposed in the study plan that the joint subcommittee examine all relevant state laws pertaining to or affecting the emergency medical care system. The intent of the statutory review is to reveal those areas of the Virginia Code related to the EMS system that require clarification, consistency, and improved statutory structure.

Public Hearings

After identifying its informational needs and the data to be provided by staff, the Office of Emergency Medical Services, and the EMS community, the joint subcommittee established a schedule of public hearings throughout the Commonwealth.

The first public hearing in August was held to solicit the views of persons representing volunteer and paid EMS personnel, the State Emergency Medical Services Advisory Board, EMS regional councils, medical directors, and other interested parties. Based, in part, on the testimony of the EMS community, the subcommittee developed proposed recommendations, which were published and distributed throughout the state to solicit public comment at the four regional public hearings. These recommendations, largely pertaining to the issues discussed above, formed the basis for public comment at the hearings.

Recommendations

At its October 23rd meeting, the joint subcommittee considered the public comments and developed a set of tentative

recommendations, which were released on November 13, 1995, for public response. At the November meeting, the joint subcommittee tentatively proposed:

- Establishing the State Emergency Medical Services Advisory Board as a regulatory board, with full fiduciary powers and regulatory authority to administer the Rescue Squad Assistance Fund; reducing the size of the board from 37 to 23 members; recommending that the director be appointed by the governor;
- Recommending that annual audits be conducted of the Virginia Volunteer Rescue Squad Funds;
- Establishing the Volunteer Rescue Squad Assistance Fund in the Code as a separate, revolving, self-perpetuating fund;
- Expanding the Financial Assistance Review Committee (FARC) to eight members, appointed by region; and
- Eliminating the requirement for a high school diploma or G.E.D. for advanced life-support training.

The subcommittee will make final its recommendations and determine the need for legislation at its December 1995 meeting.



The Honorable Robert D. Orrock, Sr., *Chairman*
Legislative Services contact: Brenda H. Edwards

SJR 383: Delivery of Governmental Services in the Greater Richmond Area

October 27, 1995, Richmond

The focus of the October meeting was on the request for proposals (RFP) process, which the joint subcommittee began in September.

RFP Process

In order to determine which services should be considered for possible regionalism, the joint subcommittee decided to enter into the RFP process in search of a consultant to develop a cost/benefit analysis for the delivery of certain services. The services to be reviewed are transportation, water and wastewater services, education, and social services.

According to a representative from the Department of General Services, Division of Purchases and Supplies, the RFP was sent out to over 100 consulting firms at the end of October. An addendum containing additions and corrections to the RFP was mailed on November 9, 1995. Sealed proposals must be delivered to the department by November 27, 1995, in order to be considered.

When all the proposals are received, they will be reviewed by the evaluation committee, which includes six members of the joint subcommittee and the Department of General Services contract officer who prepared the RFP.

Legislative Process

Following evaluation committee review, the joint subcommittee will determine whether to proceed with the RFP process. If the decision is to proceed, a budget amendment will be required to seek the funds needed to pay for the cost/benefit analysis sought through the RFP, along with a resolution to continue the study. These decisions will be made by the end of December.

Future Meetings

The next meeting of the joint subcommittee is December 4, 1995 at 9:30 a.m. At that time, an update on the RFP process will be presented. In addition, the task forces cancelled their November and December meetings, except for Senator Lambert's task force, which will meet at 8:30 a.m. on December 4.



The Honorable Henry L. Marsh III, *Chairman*
Legislative Services contact: Joan E. Putney

HJR 656: Funding for Public Transportation in Hampton Roads

*October 23, 1995, Hampton,
October 25, 1995, Norfolk*

The joint subcommittee conducted public hearings on the north and south sides of Hampton Roads to receive citizen input on funding public transportation in the region. Most speakers echoed the theme that a healthy public transportation system is vital to both the economic health of Hampton Roads and the quality of life of all of its citizens. Members of the joint subcommittee were offered a broad range of funding ideas for consideration.

Hampton Public Hearing

Seven citizens spoke at the evening public hearing at Hampton's City Council Chambers. Two speakers used the opportunity to criticize the current level of bus service. Others praised the rail transit systems in Northern Virginia, the San Francisco area, and St. Louis, and urged the implementation of similar systems in the Hampton Roads region. Rather than focusing on light rail projects, however, many speakers stressed the need to identify dedicated funding sources in order to maintain service at its current level, or increase the hours and areas of service, in an era of declining federal funding.

The executive director of the Peninsula Transportation District Commission (PENTRAN), responded to a citizen's query by noting that passenger fares provide only 40 percent of the system's operating costs. Raising fares can be counterproductive by pricing the service beyond the ability or willingness of

many riders to pay. While the development of an expanded transit system could increase ridership, funds are not currently available to finance an expansion of PENTRAN's system.

Ideas for public transportation funding offered by participants at the public hearing included (i) allocating lottery proceeds, (ii) assessing a tax on gasoline, (iii) increasing the sales tax, (iv) increasing local parking fees, and (v) levying an additional tax on trucks. Another speaker suggested that reimposing tolls on the Hampton Roads Bridge-Tunnel could provide money for expanded bus service.

Norfolk Public Hearing

Senator Yvonne B. Miller began the afternoon public hearing by welcoming the members to Norfolk State University's Brown Hall Auditorium. She identified several groups with distinct needs for a viable public transportation system: senior citizens, the disabled, residents of the central city, and suburban commuters who can relieve traffic congestion and improve air quality by taking the bus instead of their single-occupancy vehicles.

The 14 citizens speaking at the hearing offered both support for the area's public transportation system and suggestions for funding the system. Several speakers contended that maintaining the mobility of elderly citizens is a good investment because it can postpone or avoid the expensive alternative of nursing home placement. Public transportation was also identified as a critical element of a welfare reform program seeking to place persons in jobs. Other speakers denounced cutbacks in bus service, and cautioned against committing resources to a light rail system that may have to be heavily subsidized.

Two members of Norfolk's City Council addressed the Joint Subcommittee. The chairman of the Tidewater Transportation District Commission, which operates Tidewater Regional Transit (TRT), noted that 75 percent of the system's riders do not have access to alternative transportation. Dedicated funding is needed if TRT is to maintain fares at their current levels while expanding bus system service, alleviating pressure on municipal budgets, and examining a light rail option. TRT has struggled in the past decade as population and employment in the region have become more decentralized. Nevertheless, TRT has recently witnessed several positive developments, including the restoration of some bus routes, the major investment study of a light rail project, and the potential merger of PENTRAN and TRT. Unless a funding source is identified to compensate for the loss of federal operating revenue, however, this momentum could be lost and TRT may struggle to keep a skeletal bus system on the street.

A member of the Portsmouth City Council warned that the \$3 million per year federal subsidy for TRT could be lost under legislation pending in Congress. Local governments such as Portsmouth, which has difficulty funding its current annual contribution to TRT of approximately \$1 million, should not be expected to replace the lost federal funds.

A wide range of funding ideas were offered for the joint subcommittee's contemplation, including many of those discussed at the Hampton hearing. Several speakers conditioned the imposition of new fees on approval at a referendum. Other ideas suggested by speakers include (i) increasing the percentage of the Transportation Trust Fund allocated to public transportation, (ii) requiring that public transit projects receive state matching funds in the same manner as highway projects, and (iii) limiting the potential tort liability of volunteer ride providers in order to prevent increases in their automobile insurance rates.

Future Meetings

The next meeting of the joint subcommittee, scheduled for November 27 at the PENTRAN Building in Hampton, will feature an overview of public transportation funding mechanisms adopted in other jurisdictions. The subcommittee will also meet on December 19 at the same location.



The Honorable Flora D. Crittenden, *Chair*
Legislative Services contact: Franklin D. Munyan

HJR 551/SJR 334: Joint Subcommittee Studying Charter Schools

October 25, 1995, Richmond

The joint subcommittee's third meeting focused on financial issues and waivers from state education regulations. The waiver of compliance with various education laws and regulations is an integral part of the charter school concept; debate over charter schools legislation has often focused on, among other things, whether existing public schools will have access to the same flexibility granted to a charter school.

Board of Education Regulations

In addition to the Standards of Accreditation (SOA), there are currently 58 sets of Board of Education regulations governing public schools in the Commonwealth. Eight sets of these regulations address state Board of Education (BOE) procedures and have no direct application for local school divisions. Of the 50 remaining sets affecting public schools, 31 contain no provisions for flexibility; some of these regulations duplicate statutory requirements and may not be waived.

Within the 18 sets of regulations that contemplate flexibility in application, waiver and approval standards may vary between—as well as within—particular subject areas. Provisions requiring prior state approval for waivers can be found in 10 sets of regulations, while provisions that do not require state approval are sprinkled throughout 14 sets. Subject areas that may

permit flexibility without state approval include pupil transcripts, teacher licensure, jointly operated schools and programs, and instructional materials. In 1994-95, waivers were sought for five of the 10 sets of regulations for which state approval is required; of these 1,375 requests, all but five addressed special education program standards. No requests were made for waivers from regulations governing local school boards, reduction of state aid, and day-care centers for school-age children. No data were available for waiver requests for regulations governing pupil transportation and secondary school transcripts.

Charter legislation would necessarily include provisions creating or defining a waiver process for charter schools. Because the state board, and not the local school board, retains authority over state education regulations, the legislation should include some provision for either a broad waiver of regulations as identified by BOE, or for waivers granted on a case-by-case basis pursuant to each charter agreement. Because waivers from compliance with regulations governing health and safety, federal law and regulation, and the Standards of Quality (SOQ) and Standards of Learning (SOL) would be "neither possible or advisable," the Board of Education should identify which regulations address these areas, as well as any policy considerations that may make the waiver of certain other regulations "inappropriate."

Funding

Another significant component of charter schools legislation—funding—is treated differently throughout the 19 charter schools states and is inextricably linked to the particular statutory or other provisions governing school finance generally in each state. Most charter schools states—and Virginia—employ a "foundation" program using a measure of local wealth to determine state funding for public schools. Like Virginia, half of the charter schools states require some level of local effort; local fiscal capacity may be determined on the basis of property values, personal income, and other revenues, or by a combination of these indicators. Three-fourths of the charter schools states—unlike Virginia—have fiscally independent school districts. The 19 states treat categorical funding programs—capital outlay and debt service, transportation, special education, compensatory education, and gifted and talented education—in a variety of ways for charter schools.

Also varying from state to state is the degree of fiscal autonomy granted a charter school. Most statutes require the charter school to negotiate its foundation—or basic—payment and the price of central services, such as transportation, food services, libraries, custodial, curriculum, and other services provided by the school division. Even if the local school board is fiscally independent of the local governing body, few statutes afford the charter school direct access to local tax revenues used for public schools.

Most charter schools statutes incorporate an "average per-pupil expenditure" in some way when calculating payments for charter schools. This typically means that the per-pupil amount

follows a student moving from a regular public school to a charter school. A statistical average of all students, the per-pupil cost may not accurately reflect the actual cost of educating any one student.

Other funding concerns, such as facilities, special education, and teacher retirement programs, are handled differently in the various statutes. Federal funds for public education may be distributed directly to the charter school if it is considered a legally autonomous entity—like a school division; if, however, the charter school is deemed part of a local school division, federal moneys flow through the division. Start-up costs and planning grants are a rarity in charter schools statutes, appearing only in Arizona, Georgia, and New Mexico. The Federal Improving America's Schools Act (1995) included start-up moneys for charter schools.

State funding could be provided for charter schools in Virginia by either (i) allowing funds to flow through the current state and local public education funding stream or (ii) providing a special grant in the Appropriations Act for a pilot project or projects. Although special grants might afford greater flexibility, providing funding through the current SOQ formula might enhance the stability of future funding.

By state constitutional mandate, the Commonwealth and localities share fiscal responsibility for a system of public education meeting the Standards of Quality; authority to apportion these shared costs rests with the General Assembly. Recurring policy issues raised when considering charter school funding are the overall state contribution to SOQ costs, expectations and requirements about local matching funds, the potentially small charter school pupil population and corresponding probable loss of economies of scale in any smaller public school, and the way in which state funds are actually distributed to a locality.

Also considered was the "overmatching" of required contributions to SOQ costs by most localities that creates a range of local support for public education throughout the Commonwealth. Should a charter school be funded through the SOQ formula, several questions would have to be answered: What level of public education funds would be provided to the charter school? Would only state and local required funds follow pupils enrolling in these schools? What provisions would be made for nonresident pupils whose home school division may have a different average per-pupil cost, local effort, or ability-to-pay? What discretionary local funds, if any, would be provided for charter schools students? What portion of state education appropriations that are not required by the SOQ would support a charter school, and how should these amounts be determined? Would sales tax revenues be provided for charter schools?

Commission members also raised questions regarding the potentially expensive provision of special education within a small charter school and the applicability of various building, safety, and fire code regulations. Staff was directed to prepare draft legislation that would permit the creation of charter schools as new public schools or through the conversion of an existing public school. To preserve local option and to prevent administrative and fiscal problems prompted by unsolicited applications, local school boards would have to affirmatively act to announce their intention to receive, review, and approve charter school applications. The committee expects to meet before the Governor's budget is presented in December to review final recommendations, draft legislation, and a draft report.



The Honorable J. Paul Council, Jr., *Chairman*
Legislative Services contact: Kathleen G. Harris

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.



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The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.
Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF HEALTH

In accordance with Executive Order Number 15 (94), the Department of Health is seeking public comment on the regulations assigned to Group IV review from December 11, 1995, through February 8, 1996. Group IV is the final group of regulations being reviewed under Executive Order Number 15. A report of finding on each regulation reviewed will be submitted to the Secretary of Health and Human Resources by June 1, 1996. The Group IV regulations being reviewed are listed below, along with the VDH program with primary responsibility for accomplishing the review.

REGULATION	PROGRAM RESPONSIBLE
VR 355-11-200 Newborn Screening and Treatment	Office of Family Health Services
VR 355-17-02 Sewerage Regulations	Office of Water Programs
VR 355-19-04 Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities	Office of Water Programs
VR 355-19-06 Regulations Governing the Sanitary Control of the Picking, Packing and Marketing of Crab Meat	Office of Water Programs
VR 355-28-02 Rules Governing Virginia Tumor Registry	Office of Epidemiology
VR 355-29-01 Regulations Governing Vital Records and Health Statistics	Office of Vital Records and Health Statistics
VR 355-30-106 State Medical Facilities Plan (Psychiatric/Substance Abuse Treatment Services)	Office of Resources Development
VR 355-30-107 State Medical Facilities Plan (Mental Retardation Services)	Office of Resources Development
VR 355-30-108 State Medical Facilities Plan (Medical Rehabilitation Services)	Office of Resources Development
VR 355-30-113 State Medical Facilities Plan (Nursing Home Services)	Office of Resources Development

VR 355-33-01
Rules and Regulations for the Licensure of Convalescent and Nursing Homes
Office of Health Facilities Regulation

VR 355-34-03
Regulations Governing Application Fee for Construction Permits for Onsite Disposal Systems and Private Wells
Office of Environmental Health

VR 355-35-500
Regulations Governing Tourist Establishment Swimming Pools and other Public Pools
Office of Environmental Health

VR 355-35-700
Public Swimming Pool Regulations
Office of Environmental Health

VR 355-40-700
Regulations Governing Nurse Practitioner Scholarship Program
Office of Public Health Nursing

Comments should be sent to:

Rosanne Kolesar
Virginia Department of Health
Office of the Commissioner
P. O. Box 2448, Suite 214
Richmond, Virginia 23218
FAX: (804) 786-4616

DEPARTMENT OF LABOR AND INDUSTRY

COMPREHENSIVE REVIEW OF EXISTING AGENCY REGULATIONS

In accordance with the Governor's Executive Order Number Fifteen (94), effective June 21, 1994, the Virginia Department of Labor and Industry is currently conducting a comprehensive review of all of its existing regulations. The purpose of this review is to reduce the burden imposed by regulations by ensuring that the only regulations in effect are those that are essential to protect the health, safety, and welfare of citizens or for the efficient and economical performance of an important governmental function. The review will also ensure that the regulations are clearly written and easily understandable and will evaluate the effectiveness of the regulations in meeting their stated purpose.

The agency is currently reviewing the following seven regulations which have been approved by the offices of the Secretary of Commerce and Trade and the Governor for comprehensive review. Comments are requested to assist in

Schedules for Comprehensive Review of Regulations

the identification of regulations that are unclear, duplicative, or do not achieve the essential purpose for which they were established.

The agency will use an ad hoc committee to review these regulations and the comments received. Anyone interested in serving on this ad hoc committee should submit their name, address, company/organizational affiliation to the Department of Labor and Industry, Attention: Bonnie Robinson, by January 10, 1996.

Regulations Under Review:

1. VR 425-02-12. Virginia Confined Space Standard for the Construction Industry. This regulation establishes mandatory procedures for employers whose employees are directed to work in confined spaces. Confined spaces are those areas not intended for continuous employee occupancy, having a limited means of egress or exit, and subject to accumulation of potentially hazardous atmospheres or the potential for engulfment. Examples include manholes, process and storage tanks, and silos. Confined Space for General Industry is covered by a separate federal identical regulation adopted by the Safety and Health Codes Board in 1993. Thus, this regulation only applies to the construction industry.

2. VR 425-02-13. Virginia Field Sanitation Standard, Agriculture. This regulation establishes requirements for providing potable water, hand washing, and toilet facilities, and is applicable to agricultural establishments with 11 or more employees. A recent amendment requires potable water to be provided, regardless of the number of employees engaged. That amendment reflected a change previously made to federal-identical regulation 29 CFR 1928.110, "Field Sanitation."

3. VR 425-02-30. Virginia Confined Space Standard for the Telecommunications Industry. Adopted soon after the Virginia Confined Space Standard for the Construction Industry (VR 425-02-12), this regulation establishes for telecommunications workers, many of the same required safeguards found in the Confined Space regulation for construction. This Virginia-unique regulation reflects preexisting industry practices regarding employee exposure to confined spaces, typically in the form of manholes and crawl spaces used to access electrical wiring.

4. VR 425-02-65. Underground Construction Standard, Construction Industry. This regulation applies requirements of the Virginia-unique Confined Space Standard for the Construction Industry, VR 425-02-12, which are more stringent than preexisting provisions of this regulation, to underground construction areas which, while covered by this section, also meet the definition of "confined space" in VR 425-02-12.

5. VR 425-02-72. Sanitation in Construction Industry. This regulation requires employers in the construction industry to provide potable water, hand washing, and toilet facilities, for their employees. A recent amendment requires toilet and hand washing facilities be made available at a 20:1 (workers/facility) ratio.

6. VR 425-02-89. Excavations Standard, Construction Industry. This regulation applies requirements of the Virginia-unique Confined Space Standard for the Construction

Industry, VR 425-02-12 which are more stringent than preexisting provisions of this regulation, to excavations which, while covered by this section, also meet the definition of "confined space" in VR 425-02-12.

7. No VR Number. Access to Employee Medical and Exposure Records. Except for amendments made by federal OSHA on September 29, 1988, this regulation mirrors federal regulation 29 CFR 1910.20, "Access to Employee Exposure and Medical Records." The Virginia Safety and Health Codes Board declined to adopt the September 29, 1988, federal OSHA amendments on the grounds that those amendments had no additional impact regarding the occupational safety and health of Virginia's employees.

Generally, this regulation requires employers to preserve and maintain for 30 years records pertinent to their employees' exposure to toxic substances; provide and assure access to these records by employees, their designated representatives; and by VOSH personnel; and to inform their employees of their rights under this regulation.

Comments: Comments on these regulations must be received on or before January 26, 1996. Mail or fax all written comments to the Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219, Attention: Bonnie Robinson, FAX (804) 786-9877. Written or faxed comments should contain the following information:

1. Name, address and telephone number of person submitting comments;
2. Regulation number and title of regulation;
3. Recommended action to be taken with regard to the specific regulation;
4. Statement of need and justification for the proposed action;
5. Statement of impact on the person submitting comments;
6. Identification of other affected persons or organizations and statement of impact on these entities; and
7. Recommended alternatives to the regulation, if any.

Copies of the regulations may be obtained from the Virginia Department of Labor and Industry.

Agency Contact: Bonnie Robinson, Regulatory Coordinator, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219, telephone (804) 371-2631.

GENERAL NOTICES/ERRATA

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

COMMISSION FOR THE ARTS

Notice of Revision to Guidelines

The Virginia Commission for the Arts is revising its guidelines for funding for 1996-98. These guidelines cover eligibility for funding, application and review procedures, and projected grant amounts.

The board of the commission will adopt the final version of the guidelines on December 6, 1995. Anyone who wishes to review and comment on the guidelines should contact the commission office to receive a copy of the draft guidelines. Comments can be made in writing, by email, or by telephoning any member of the commission staff.

Virginia Commission for the Arts
Lewis House - Second Floor
223 Governor Street
Richmond, VA 23219-2010
(804) 225-3132 (voice/TDD)
(804) 225-4327 (FAX)
email: vacomm@artswire.org

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of New Telephone Numbers

Effective December 1, 1995, the prefix for the department's headquarters at 629 East Main Street in Richmond will change. The new prefix is 698. The remaining four numbers will remain the same.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, 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 OBJECTIONS - RR08

ERRATA

CHILD DAY CARE COUNCIL

Title of Regulation: VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.

Publication: 12:4 VA.R. 504-539 November 13, 1995.

Correction to Final Regulation:

Page 506, column 1, definition of "Child day center," exemption 1, line 2, after "\$ 63.1-196.3" add "of the Code of Virginia"

Page 508, column 1, definition of "Program director," exception, line 2, change "orientation/training" to "orientation or training"

Page 509, column 1, § 2.1 H, line 6, change "state code" to "the Code of Virginia"

Page 510, column 1, § 2.2 B, line 3, change "\$ 2.2 A" to "subsection A of this section"

Page 511, column 1, § 2.4 12, change "date" to "dates"

Page 513, column 2, § 2.12, Exception 1 b, line 4, change "\$§ 2.11 and 2.12" to "\$ 2.11 and this section"

Page 513, column 2, § 2.12, exception 2, remove parentheses around the phrase "Subsection D of § 22.1-270 of the Code of Virginia"

Page 514, column 2, § 3.1 E, line 7, after "management," add "and"

Page 517, column 1, § 3.11 A, paragraph 2, line 4, change "older, (ii)" to "older; (ii)"

Page 517, column 1, § 3.11 A, paragraph 2, line 5, after children, change "," to ";

Page 517, column 2, § 3.12 C, exception, line 3, after "4" add "of this section"

Page 519, column 1, § 4.2 A, line 5, add parentheses around the phrase "13 VAC 5-50-10 et seq."

Page 519, column 2, § 4.2 D, exception, line 1, after "D" add "of this section"

General Notices/Errata

Page 521, column 1, § 4.8 D, line 2, change "provide" to "provided"

Page 527, column 2, § 6.11 A 1, line 2, change "ordinance" to "ordinances"

Page 530, column 2, § 7.5 F, line 2, change "10-15" to "10 to 15"

Page 531, column 1, § 8.1 F 2, line 4, change "XII" to "XI"

Page 536, column 1, § 9.6, line 2, after "below" add ","

Page 536, column 2, under heading "Sensorial," move "Aid to child's processes of classification" under "Purpose"

Title of Regulation: VR 175-09-01. Minimum Standards of Licensed Child Day Centers Serving School Age Children.

Publication: 12:4 VA.R. 539-572 November 13, 1995

Corrections to Final Regulation:

Page 542, column 2, § 1.1, definition of "Montessori preschools," line 3, after "Society," strike "American"

Page 546, column 1, § 2.4 12, change "date" to "dates"

Page 550, column 1, § 3.4 C 1, line 1, change "bachelors" to "bachelor's"

Page 550, column 2, § 3.4 C 5, line 2, strike "to"

Page 554, column 1, § 4.2 A, line 3, add parentheses around "13 VAC 5-50-10 et seq."

Page 556, column 1, § 4.8 D, line 2, change "provide" to "provided"

Page 556, column 1, § 4.8 E, line 3, change "restrooms" to "restroom areas"; line 4, add "," after "programs"

Page 556, column 2, § 4.10 B, line 2, change "7" to "75"

Page 559, column 1, § 6.2 D, line 1, change "self direction" to "self-direction"

Page 560, column 2, § 6.7 F, line 3, strike "§ 6.51. Reserved."

Page 563, column 1, § 7.3 A 3, line 2, strike "equivalent to the curriculum which has been approved by the State Board of Health"

Page 563, column 2, § 7.4 D 1, line 3, after ":", add "and"

Page 563, column 2, § 7.4 D 2, line 3, change ":", to "."

Page 565, column 2, § 8.3 B 5, line 2, change "subdivisions 1 through 4" to "the requirements"

Page 570, column 1, § 9.6, under heading "Sensorial," move "Aid to child's processes of classification" under "Purpose"

CALENDAR OF EVENTS

Symbol 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

BOARD FOR ACCOUNTANCY

December 19, 1995 - 11 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿

A specially called meeting to adopt final regulations for fee decrease and to review proposed regulations. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

† **January 22, 1996 - 10 a.m.** -- Open Meeting
† **January 23, 1996 - 8 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Corn Board

December 12, 1995 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.♿

The board will meet in regular session to discuss issues related to the Virginia Corn Industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Program Director, Virginia Corn Board, 116 Reservoir St., Harrisonburg, VA 22801, telephone (540) 434-2699.

Virginia Horse Industry Board

December 14, 1995 - 10 a.m. -- Open Meeting
Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia.♿

January 19, 1996 - 1 p.m. -- Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, 1st Floor, Richmond, Virginia.♿

The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

Calendar of Events

ALCOHOLIC BEVERAGE CONTROL BOARD

† December 11, 1995 - 9:30 a.m. -- Open Meeting
† January 8, 1996 - 9:30 a.m. -- Open Meeting
† January 22, 1996 - 9:30 a.m. -- Open Meeting
† February 5, 1996 - 9:30 a.m. -- Open Meeting
† February 21, 1996 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters have not yet been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Architects

December 15, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

VIRGINIA AVIATION BOARD

December 19, 1995 - 3 p.m. -- Open Meeting
Department of Aviation, 5702 Gulfstream Road, Sandston, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

December 20, 1995 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bi-monthly meeting of the board. Applications for state funding will be presented to the board and other

matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BRANCH PILOTS

December 12, 1995 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHARITABLE GAMING COMMISSION

† December 15, 1995 - 10 a.m. -- Open Meeting
Ninth Street Office Building, 200-202 North 9th Street, 6th Floor Conference Room, Richmond, Virginia.

A regular meeting of the commission.

Contact: Kari Walter, Charitable Gaming Commission, 200 N. 9th St., Room 1030, Richmond, VA 23219, telephone (804) 786-0293 or FAX (804) 786-5602.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 12, 1995 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Conference Room 3, Lower Level, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by November 30, 1995, from the Chesapeake Bay Local Assistance Department.

Contact: Florence E. Jackson, Program Support Technician, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

† December 14, 1995 - 9:30 a.m. -- Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level,
Conference Room 1, Richmond, Virginia. (Interpreter for
the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible changes in meeting time. Committee chairs will meet with the council chair at 9:30 a.m., and the regular meeting will start at 10 a.m.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

BOARD FOR CONTRACTORS

December 13, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act and Code of Virginia, and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Debbie A. Amaker, Legal Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8582.

Applications Review Committee

December 12, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A regularly scheduled meeting to review applications with convictions and complaints for Class A, B, and C contractor licenses. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Geralde Morgan. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Geralde W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785.

Recovery Fund Committee

December 19, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

Tradesman Certification Committee

December 12, 1995 - 1 p.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A meeting to discuss matters which require attention and to begin the process of reviewing emergency regulations. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Elizabeth Kirksey. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Elizabeth Y. Kirksey, Board Administrator, Tradesman Certification, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-6166.

BOARD OF CORRECTIONS

† December 13, 1995 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia.

A meeting to discuss matters which may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Administration Committee


† December 13, 1995 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia.

A meeting to discuss administrative matters which may be presented to the full board.

Calendar of Events

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.


Correctional Services Committee

† **December 12, 1995 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss correctional services matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.


Liaison Committee

† **December 13, 1995 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 


A meeting to discuss criminal justice matters.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.


BOARD FOR COSMETOLOGY

December 11, 1995 - 10 a.m. -- Open Meeting
January 15, 1996 - 10 a.m. -- CANCELLED
† **January 22, 1995 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD 


BOARD OF DENTISTRY

December 15, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


A meeting to conduct informal conferences. No public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 


Continuing Education Committee

January 17, 1996 - 4 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)


A regular meeting. A 20-minute public comment period will be held beginning at 4 p.m.


Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 

Endorsement Committee


January 18, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings. This is a public meeting; however, no public comment will be taken.


Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 

January 19, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A full board meeting to conduct regular board business and to review reports from the following committees: legislative/regulatory, continuing education, examination, advertising and budget. This is a public meeting and public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

December 13, 1995 - 6 p.m. -- Open Meeting
Alexandria Sanitation Authority, 835 South Payne Street, Alexandria, Virginia. 
(Interpreter for the deaf provided upon request)

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, City of Alexandria, 900 Second St., Alexandria,

VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD

LOCAL EMERGENCY PLANNING COMMITTEE - MONTGOMERY COUNTY/BLACKSBURG

December 12, 1995 - 3 p.m. -- Open Meeting
Montgomery County Courthouse, Board of Supervisors' Room, 3rd Floor, Christiansburg, Virginia. ☎

A meeting to review and vote on amendments to the constitution and by-laws for the purpose of electing officers for a designated period of time. This will include chair, vice chair, public information, and hazardous materials officers. The committee will also consider forming a subcommittee for the purpose of assisting and reviewing each industry within the region for compliance to applicable regulations and laws governing chemicals. These site visits will be conducted on an invitation basis only, and are not established as intrusionary. The subcommittee, if established by the committee, will be a panel of members with expertise of applicable laws and regulations governing chemical use, storage, and transfer.

Contact: Vincent D. Stover, Secretary, 1612 Wadsworth St., Radford, VA 24143, telephone (540) 639-9313.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Technical Advisory Committee for Solid Waste Management Regulations

December 15, 1995 - 10 a.m. -- Open Meeting
January 12, 1996 - 10 a.m. -- Open Meeting
February 2, 1996 - 10 a.m. -- Open Meeting
February 23, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor Training Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss desirable amendments to the current Virginia Solid Waste Management Regulations (VR 672-20-10) [9 VAC 20-80-10 et seq.]

Contact: Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218, FAX (804) 762-4327 or (804) 762-4021/TDD ☎

VIRGINIA FIRE SERVICES BOARD

† December 15, 1995 - 9 a.m. -- Open Meeting
Richmond Airport Hilton, Sandston, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† December 14, 1995 - 10 a.m. -- Open Meeting
Richmond Airport Hilton, Sandston, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† December 14, 1995 - 9 a.m. -- Open Meeting
Richmond Airport Hilton, Sandston, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† December 14, 1995 - 1 p.m. -- Open Meeting
Richmond Airport Hilton, Sandston, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

December 11, 1995 - 9 a.m. -- Open Meeting
December 12, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

Informal conferences will be conducted.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Regulatory Review Committee

† December 13, 1995 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

The Regulatory Review Committee of the board will hold a public hearing. Public comment will be received.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th

Calendar of Events

Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

NOTE: REVISED NOTICE

January 9, 1996 - 10 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet and review a study on management of the agency's fish hatcheries and will address issues related to fox pens. In addition, general and administrative matters may be discussed. The board may hold an executive session.

Contact: Phil Smith, Policy Analyst Senior, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

BOARD OF HEALTH PROFESSIONS

Administration and Budget Committee

December 15, 1995 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

The committee will consider and propose comment on the budget of the Department of Health Professions for the 1996-1998 biennium. Brief public comment will be received at the beginning of the meeting.

Contact: Robert A. Nebiker, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9919 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

December 12, 1995 - 9:30 a.m. -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☎

A monthly meeting of the council.

Contact: Richard L. Walker, Director of Administration, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

January 8, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

December 11, 1995 - 11 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia.

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 746-7184.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 2, 1996 - 9 a.m. -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

December 29, 1995 -- Public 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 Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume 1 - New Construction Code/1993**. The purpose of the proposed action is to (i) amend the "Notice of Violation" section to comport with the Code of Virginia; (ii) amend the requirements for the spacing of intermediate supports for guardrails; (iii) amend the sections that establish "Wind Zones" in Virginia to comply with those required by new federal regulation; (iv) delete vague and subjective text in the regulation regarding ice damming on roofs for one and two family dwellings; (v) raise the size and occupancy

threshold regarding when permits are required for tents; and (vi) amend the "Existing Building" section for clarity and remove vague and subjective language which may be barriers to revitalization of existing buildings.

Statutory Authority: § 36-98 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **December 19, 1995 - 11 a.m.** -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissions to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for Multi-Family Housing Developments and Rules and Regulations for Allocation of Low-Income Housing Tax Credits; and (v) consider such other matters and take such other actions as it may deem appropriate. Various committees of the board may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† **January 9, 1996 - 1 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia.

A regular meeting to discuss such matters as may be presented.

Contact: Adele MacLean, Secretary, Advisory Commission on Intergovernmental Relations, Eighth Street Office Bldg., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508 or FAX (804) 371-7999.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

December 14, 1995 - 10 a.m. -- Open Meeting

Richmond Technical Center, 2020 Westwood Avenue, Room 201, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the council.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-9877 or (804) 786-2376/TDD ☎

Safety and Health Codes Board

December 11, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The tentative agenda items for consideration by the board include:

1. Asbestos Standard, Extension of Start-up Dates and Subsequent Amendments: General Industry, § 1910.1001, VR 425-02-09; Shipyard Employment, § 1915.1001, VR 425-02-178; and Construction, § 1926.1101, VR 425-02-10.
2. Fall Protection, Construction Industry, Correcting Amendment, VR 425-02-177.
3. Logging Operations, General Industry, Corrections and Technical Amendments, § 1910.266, VR 425-02-52.

Contact: John J. Crisanti, Policy Analyst, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384, FAX (804) 786-8418 or (804) 786-2376/TDD ☎

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

† **December 12, 1995 - 11 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 4th Floor West Conference Room, Richmond, Virginia.

A committee meeting on the grant process.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

† **December 12, 1995 - 1:30 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 4th Floor West Conference Room, Richmond, Virginia.

A meeting to (i) review and make recommendations on applications for grants from the fund; (ii) promote the control, prevention, and elimination of litter from the Commonwealth and encourage recycling; and (iii) advise the Director of the Department of Environmental Quality on other litter control and recycling matters.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

Calendar of Events

STATE COUNCIL ON LOCAL DEBT

December 20, 1995 - 11 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, Richmond, Virginia. ☎

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

January 8, 1996 - 10:30 a.m. -- Open Meeting
Town of Round Hill; site to be determined.

Oral presentations regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

January 8, 1996 - 7 p.m. -- Public Hearing
Town of Round Hill; site to be determined.

A public hearing regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

January 9, 1996 - 9 a.m. -- Open Meeting
Leesburg area; site to be determined.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Board of Visitors

† December 16, 1995 - 2 p.m. -- Open Meeting
Longwood House, Johnston Street, Farmville, Virginia.

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

VIRGINIA MANUFACTURED HOUSING BOARD

† December 13, 1995 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

MARINE RESOURCES COMMISSION

† December 19, 1995 - 9:30 am. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

† December 19, 1995 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A meeting to discuss medical assistance services and to take action on issues pertinent to the board.

Contact: Cynthia Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

BOARD OF MEDICINE

Informal Conference Committee

December 13, 1995 - 9:30 a.m. -- Open Meeting
The Sheraton Inn Fredericksburg, 2801 Plank Road, Fredericksburg, Virginia.

December 15, 1995 - 9:30 a.m. -- Open Meeting
Fort Magruder Inn and Conference Center, Route 60, Williamsburg, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD

BOARDS OF MEDICINE AND PSYCHOLOGY

Task Force on the Unified Regulation of Psychologists

NOTE: REVISED NOTICE

December 12, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, Southern States Building, 6606 West Broad Street, Conference Room 6 North, Richmond, Virginia.

A joint meeting of the Boards of Medicine and Psychology to discuss draft legislation to allow for regulation of all licensed psychologists by a single regulatory board. Public comment will be received at the beginning of the meeting on proposed changes to the legislation.

Contact: Janet Delorme, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† **December 15, 1995 - 9 a.m. -- Open Meeting**
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, 13th Floor, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† **January 26, 1996 - 9 a.m. -- Open Meeting**
Central State Hospital, Petersburg, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Theresa P. Evans, Acting State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, toll-free 1-800-451-5544 or (804) 371-8977/TDD

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **January 17, 1996 - 10 a.m. -- Open Meeting**
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board to discuss business and promulgate policy and regulations. The agenda will include a public comment period at the beginning of the meeting and the agenda will be available one week in advance of the meeting.

Contact: Jane V. Helfrich, Board Administrator Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7945 or toll-free 1-800-451-5544.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mined Land Reclamation

† **February 14, 1996 - 9:30 a.m. -- Open Meeting**
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the permit streamlining/standardization work group to advise the agency on development of standardized, streamlined permit applications. This work group meeting is open to the public. There will be a public comment period at the conclusion of the meeting.

Calendar of Events

Contact: Les Vincent, Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8178, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

MOTOR VEHICLE DEALER BOARD

December 19, 1995 - 9 a.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Department of Motor Vehicles (DMV) at (804) 367-6606 at least 10 days prior to the meeting so that suitable arrangements can be made. DMV and the board fully comply with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Department of Motor Vehicles. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: W. Gail Morykon, Chief, Investigative Services, Department of Motor Vehicles, P.O. Box 27412, Room 625A, Richmond, VA 23269-0001, telephone (804) 367-6002, FAX (804) 367-2936 or (804) 272-9278/TDD ♿

VIRGINIA MUSEUM OF FINE ARTS

January 2, 1996 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ♿

A briefing for museum officers of current and upcoming museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Collections Committee

December 13, 1995 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ♿

A meeting to consider gift offers, purchases, and loans. This is a regularly scheduled meeting. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Executive Committee

December 13, 1995 - 1 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ♿

A meeting to approve committee and staff reports. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

† **December 11, 1995 - 9 a.m.** -- Open Meeting
† **December 12, 1995 - 9 a.m.** -- Open Meeting
† **December 13, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A special conference committee will conduct informal conferences with licensees and/or certificate holders to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ♿

VIRGINIA OUTDOORS FOUNDATION

† **December 15, 1995 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 2nd Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to accept conservation easements. Public comment will be allowed.

Contact: Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room #420, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

BOARD OF PHARMACY

† **December 13, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A regular board meeting to conduct formal hearings and to review a draft report of the Regulation Committee for Comprehensive Review of Regulations regarding VR 530-01-1 pursuant to Executive Order 15(94). This is a public meeting and there will be a 15-minute public comment period beginning at 9:15 a.m.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

† **January 25, 1996 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A meeting to conduct informal conference. Public comments will not be received.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PSYCHOLOGY

December 12, 1995 - 11 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

An informal conference will be held pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9967.

REAL ESTATE BOARD

† **December 13, 1995 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

Selected members of the board and other subject matter experts will meet to review the Virginia real estate examinations in an examination workshop.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

December 14, 1995 - 8:30 a.m. -- Open Meeting
December 15, 1995 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regular business meeting of the board to include review of investigative matters, consideration of applications, various requests to the board for information, work session on regulations, and other business.

Contact: Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

Continuing Education Committee

December 14, 1995 - 7:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

The committee will meet to approve continuing education courses.

Contact: William H. Ferguson II, Education Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526 or (804) 367-9753/TDD ☎

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† **December 14, 1995 - 11 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room One, Richmond, Virginia.

A meeting to continue work on developing and monitoring a plan to strengthen Virginia's recycling infrastructure and markets; setting forth strategies primarily designed to improve the supply, quantity, and quality of recyclables; and providing strategies for increasing the demand for recycled products and expanding the capacity of collectors, processors, and manufacturers to handle and use specified recyclable materials. Proposed legislation on absenteeism and funding will be discussed. The meeting will be dependent on a quorum of 10. Subcommittee meetings will be held prior to or after the general council meeting; subcommittee mandates at 9 a.m. Call Paddy Katzen for details.

Contact: Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

VIRGINIA RESOURCES AUTHORITY

December 12, 1995 - 9:30 a.m. -- Open Meeting
January 9, 1996 - 9:30 a.m. -- Open Meeting
February 13, 1996 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.


Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building,

Calendar of Events


Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

VA 23282-1880, telephone (804) 367-0167 or FAX (804) 367-6020.


BOARD OF SOCIAL WORK

† **January 12, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. 


An ad hoc committee meeting on regulatory review for analysis of current regulations governing social work. Public comment will be received at 10:15 a.m.

Contact: Janet Delorme, Deputy Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD 

STATEWIDE HUMAN SERVICES INFORMATION AND REFERRAL ADVISORY COUNCIL

† **January 31, 1996 - 10 a.m.** -- Open Meeting
United Way Services, 224 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to receive public comment concerning the policies, directions and recommendations for services provided by the Statewide Human Services Information and Referral System. The council advises the Department of Social Services in the administration of free and confidential information provided to citizens of the Commonwealth. The department contracts with five regional centers to provide the free and confidential information on the vast range of private and public agencies and programs that provide services to Virginians throughout the Commonwealth.

Contact: Zandra Thompson, Human Services Program Specialist, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-2202, FAX (804) 692-2209 or toll-free 1-800-552-7096/TDD 

DEPARTMENT OF TAXATION

March 22, 1996 - 10 a.m. -- Public Hearing
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.


March 31, 1996 -- Public 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 Taxation intends to adopt regulations entitled: **VR 630-3-439 [23 VAC 10-120-291 through 23 VAC 10-120-299]. Major Business Facility Job Tax Credit.** The regulation provides guidance for qualification, computation and recapture of the major business facility job tax credit.


Statutory Authority: § 58.1-439 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond,


TELECOMMUNICATIONS RELAY SERVICE ADVISORY BOARD

† **December 13, 1995 - 10 a.m.** -- Open Meeting
Department for the Deaf and Hard-of-Hearing, 1100 Bank Street, 11th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting open to the public. Public comment will be permitted with advance notice.


Contact: Gloria L. Cathcart, Human Services Program Specialist, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917 (V/TTY) or (804) 225-2570/TDD 

COMMONWEALTH TRANSPORTATION BOARD

† **December 20, 1995 - 2 p.m.** -- Open Meeting
1250 South Hayes Street, Arlington, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.


Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **December 21, 1995 - 10 a.m.** -- Open Meeting
1250 South Hayes Street, Arlington, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

December 20, 1995 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, 3rd Floor, Richmond, Virginia. 

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

December 15, 1995 -- Public 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 Veterinary Medicine intends to amend regulations entitled: **VR 645-01-1 [18 VAC 150-20-10 et seq.] Regulations Governing Veterinary Medicine.** The board proposes a one-time, two-year reduction in fees for licensure and renewals and a permanent reduction in the state jurisprudence exam fee.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9915.

December 19, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Board meeting, formal hearing, regulatory review to include adoption of proposed fee reductions as final regulations and to consider action as needed to comply with the legislative mandate to promulgate continuing education regulations. Brief public comment will be received at the beginning of the meeting.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-9919 or (804) 662-7197/TDD

VIRGINIA RACING COMMISSION

† **December 20, 1995 - 9:30 a.m.** -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular commission including a discussion of a proposed regulation relating to medication and a report on the progress of the construction of Colonial Downs in New Kent County.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

BOARD FOR THE VISUALLY HANDICAPPED

† **January 17, 1996 - 1 p.m.** -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Administrative Assistant, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD or toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

February 3, 1996 - 11 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Board for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VIRGINIA WAR MEMORIAL FOUNDATION

Board of Trustees

† **January 9, 1996 - Noon** -- Open Meeting
Virginia War Memorial, 621 Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting to vote on proposed changes to bylaws.

Contact: Jon C. Hatfield, Assistant Director, Department of General Services, Division of Engineering and Buildings, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-3263.

STATE WATER CONTROL BOARD

January 8, 1996 - 7 p.m. -- Open Meeting
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

January 10, 1996 - 7 p.m. -- Open Meeting
Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, Virginia.

Calendar of Events

A meeting to receive comments from the public on the Notices of Intended Regulatory Action on the regulations governing aboveground storage tanks and tank vessels.

Contact: David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

January 18, 1996 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101C Mounts Bay Road, Building C Williamsburg, Virginia.

January 29, 1996 -- Public comments may be submitted until 4 p.m. on this date.

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 62J-14-10 [9 VAC 25-115-10 et seq.] General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.** The purpose of the proposed regulation is to establish limits for the discharge of wastewater and storm water associated with industrial activity from seafood processing facilities.

Question and answer period: A question and answer period will be held one half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

Accessibility to persons with disabilities: The public hearing will be held at facilities believed to be accessible to persons with disabilities. Any person with questions should contact Mr. Michael B. Gregory at the address below. Persons needing interpreter services for the deaf should notify Mr. Gregory no later than Monday, January 8, 1996, TDD (804) 762-4021.

Request for comments: The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit. Also, comments regarding the benefits of the stated alternative or any other alternatives are welcome. Comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. Only those comments received by January 29, 1996, will be considered by the board.

Other information: The department has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Gregory at the address below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4065 or (804) 762-4021/TDD.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 14, 1995 - 8:30 a.m. -- CANCELLED
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review regulations under Executive Order 15(94) has been cancelled.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

INDEPENDENT

STATE LOTTERY BOARD

† **December 20, 1995 - 9:30 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, 8th Floor, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

LEGISLATIVE

VIRGINIA CODE COMMISSION

December 20, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, Speaker's Conference Room, 6th Floor, 910 Capitol Square, Richmond, Virginia.

A regularly scheduled meeting.

Contact: E.M. Miller, Jr., Director, or Jane Chaffin, Assistant Registrar, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON YOUTH

December 13, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Juvenile Justice System Study Task Force to discuss Task Force approval of legislation and final report. HJR 604.

Contact: Joyce Huey, General Assembly Bldg., 910 Capitol St., Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

December 11

- † Alcoholic Beverage Control Board
- Cosmetology, Board for
- Funeral Directors and Embalmers, Board of
- Higher Education Tuition Trust Fund, Virginia
- Labor and Industry, Department of
 - Safety and Health Codes Board
- † Nursing, Board of

December 12

- Agriculture and Consumer Services, Department of
 - Virginia Corn Board
- Branch Pilots, Board for
- Chesapeake Bay Local Assistance Board
- Contractors, Board for
 - Applications Review Committee
 - Tradesman Certification Committee
- † Corrections, Board of
 - Correctional Services Committee
- Emergency Planning Committee, Local - Montgomery County/Blacksburg
- Funeral Directors and Embalmers, Board of
- Health Services Cost Review Council, Virginia
- † Litter Control and Recycling Fund Advisory Board
- Medicine, Board of/Board of Psychology
 - Task Force on the Unified Regulation of Psychologists
- † Nursing, Board of
- Psychology, Board of
- Resources Authority, Virginia

December 13

- Contractors, Board for
- † Corrections, Board of
 - Administration Committee
- Emergency Planning Committee - Local, City of Alexandria
- † Manufactured Housing Board, Virginia
- Medicine, Board of
 - Informal Conference Committee
- Museum of Fine Arts, Board of
 - Collections Committee
 - Executive Committee
- † Nursing, Board of
- † Pharmacy, Board of
- † Real Estate Board
- † Telecommunications Relay Service Advisory Board
- Youth, Commission on

December 14

- Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
- † Child Day-Care Council
- † Corrections, Board of
 - Liaison Committee
- † Fire Services Board, Virginia
 - Fire/EMS Education and Training Committee
 - Fire Prevention and Control Committee
 - Legislative/Liaison Committee
- Labor and Industry, Department of
 - Virginia Apprenticeship Council
- Real Estate Board
 - Continuing Education Committee
- † Recycling Markets Development Council, Virginia

December 15

- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- † Charitable Gaming Commission
- Dentistry, Board of
- Environmental Quality, Department of
 - Technical Advisory Committee for Solid Waste Management Regulations
- † Fire Services Board, Virginia
- Health Professions, Board of
- Medicine, Board of
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee
- † Outdoors Foundation, Virginia
 - Board of Trustees
- Real Estate Board

December 16

- † Longwood College
 - Board of Visitors

December 19

- Accountancy, Board for
- Aviation Board, Virginia
- Contractors, Board for
- † Housing Development Authority, Virginia
- † Marine Resources Commission
- † Medical Assistance Services, Board of
- Motor Vehicle Dealer Board
- Veterinary Medicine, Board of

December 20

- Aviation Board, Virginia
- Local Debt, State Council on
- † Lottery Board, State
- † Transportation Board, Commonwealth
- Treasury Board
- † Virginia Racing Commission

December 21

- † Transportation Board, Commonwealth

January 2, 1996

- Hopewell Industrial Safety Council
- Museum of Fine Arts, Virginia
 - Board of Trustees

Calendar of Events

January 8

† Alcoholic Beverage Control Board
Hearing Aid Specialists, Board for
Local Government, Commission on
Water Control Board, State

January 9

Game and Inland Fisheries, Board of
† Intergovernmental Relations, Advisory Commission on
Local Government, Commission on
Resources Authority, Virginia
† War Memorial Foundation, Virginia
- Board of Trustees

January 10

Water Control Board, State

January 12

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste
Management Regulations
† Social Work, Board of

January 15

Cosmetology, Board for

January 17

Dentistry, Board of
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
† Visually Handicapped, Board for the

January 18

Dentistry, Board of
- Endorsement Committee

January 19

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Dentistry, Board of
- Endorsement Committee

February 2

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste
Management Regulations

January 22

† Accountancy, Board for
† Alcoholic Beverage Control Board

January 23

† Accountancy, Board for

January 25

† Pharmacy, Board of

January 26

† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee

January 31

† Statewide Human Services Information and Referral
Advisory Council

February 3

Visually Handicapped, Department for the

- Advisory Committee on Services

February 5

† Alcoholic Beverage Control Board

February 13

Resources Authority, Virginia

February 14

† Mines, Minerals and Energy, Department of
- Division of Mined Land Reclamation

February 21

† Alcoholic Beverage Control Board

February 23

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste
Management Regulations

PUBLIC HEARINGS

December 13

† Funeral Directors and Embalmers, Board of
- Regulatory Review Committee

January 18, 1996

Water Control Board, State

March 22

Taxation, Department of