http://register.dls.virginia.gov Virginia Code Commission

Virginia Register of Regulations

VOL. 27 ISS. 10 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION JANUARY 17, 2011

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $197.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **26:20 VA.R. 2510-2515 June 7, 2010,** refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.dls.virginia.gov).

January 2011 through December 2011

Volume: Issue	Material Submitted By Noon*	Will Be Published On
27:10	December 28, 2010 **(Tuesday)**	January 17, 2011
27:11	January 12, 2011	January 31, 2011
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
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28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 **(Tuesday)**	December 5, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA GAS AND OIL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Gas and Oil Board intends to consider promulgating the following regulation: **4VAC25-165, Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes.** The purpose of the proposed action is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act created a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas.

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

Statutory Authority: §§ 45.1-361.15 and 45.1-361.22:1 of the Code of Virginia.

Public Comment Deadline: February 16, 2011.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email michael.skiffington@dmme.virginia.gov.

VA.R. Doc. No. R11-2556; Filed December 20, 2010, 2:37 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC40-661, Child Care Program**, that was published in 26:24 VA.R. 2784 August 2, 2010.

Agency Contact: Karin Clark, Department of Social Services, Office of Commissioner, WyteStone Building, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R10-2438; Filed December 27, 2010, 11:22 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-50. Candidate Qualification (adding 1VAC20-50-10, 1VAC20-50-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with Registrar of Regulations.

Agency Contact: Peter Goldin, Policy Analyst, State Board of Elections, 1100 Bank St., Richmond, VA 23219, telephone (804) 864-8930, FAX (804) 786-0760, or email peter.goldin@sbe.virginia.gov.

Summary:

This regulation provides standards to assist officials in determining omissions that are always material and cause an independent candidate petition to be rendered invalid and those omissions that are not material. No substantive changes were made to the regulation since publication of the proposed regulation.

CHAPTER 50
CANDIDATE QUALIFICATION

1VAC20-50-10. (Reserved.)

1VAC20-50-20. Material omissions from candidate petitions.

A. Pursuant to the requirements of § 24.2-506 of the Code of Virginia, a petition page should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions should be rendered invalid if:

1. The petition submitted is not the double-sided, two-page document, or a copy thereof, provided by the State Board of Elections;

2. The petition does not have the name, or some variation of the name, and address of the candidate on the front of the form;

3. The circulator has not signed the petition affidavit and provided his current address;

4. The circulator is not a registered voter or qualified to register and vote for the candidate;

5. The circulator has not signed each petition page he circulated in the presence of a notary;

6. The circulator has not had a notary sign the affidavit for each petition submitted; or

7. Any combination of the scenarios of this subsection exists.

C. If the circulator signs the petition in the "Signature of Registered [~~Voters,"~~ Voter,"] his signature shall be invalidated but the petition page shall be valid notwithstanding any other error or omission.

D. The petition should not be rendered invalid if:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "office sought" is omitted;

3. The "congressional district" is omitted;

4. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;

5. The name of the candidate and office sought are omitted from the back page of the petition;

6. The circulator has not indicated the county, city, or town of his voter registration or voter eligibility in the affidavit;

7. The circulator has not provided the last four digits of his social security number in the affidavit;

8. The notary has not affixed a photographically reproducible seal; or

9. The notary has not included his registration number and commission expiration date.

NOTICE: The following form used in administering the regulation has been filed by the State Board of Elections. The form is not being published; however, the name of the form is listed below. Online users of this issue of the Virginia

Register of Regulations may access the form by clicking on the name of the form. The form is also available for public inspection at the State Board of Elections, 1100 Bank Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[FORMS (1VAC20-50)

Commonwealth of Virginia Petition of Qualified Voters, SBE 506/521 (rev. 7/10).]

VA.R. Doc. No. R11-2572; Filed December 15, 2010, 3:06 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Final Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-50, 4VAC15-20-130, 4VAC15-20-140).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) update the department's "List of Native and Naturalized Fauna of Virginia," consistent with current nomenclature and knowledge of the wildlife of the Commonwealth; (ii) add the Virginia northern flying squirrel (Glaucomys sabrinus fuscus) to the Virginia List of Endangered and Threatened Species, thereby prohibiting the taking, transportation, possession, or sale of these rare native species without a permit, and adopt the updated and modified federal list of endangered and threatened wildlife species to clarify the federal and state status of affected species; and (iii) delete the regulatory definition of "special concern," which will reduce confusion with species identified in Virginia's Wildlife Action Plan as "species of greatest conservation need."

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal" and "domestic animal."

In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

~~"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.~~

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2007~~ 2010 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's ~~2007~~ 2010 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa domestica), including pot-bellied pig.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of red fox (Vulpes) where their coat color can be distinguished from wild red fox.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated races of European rabbit (Oryctolagus cuniculus).

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter,variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, longhead	Percina macrocephala
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum tigrinum

Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake (Coastal Plain population of	Crotalus horridus

timber rattlesnake)	
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Wren, Bewick's	Thryomanes bewicki bewickii

Threatened:

Eagle, bald	Haliaeetus leucocephalus
Falcon, peregrine	Falco peregrinus
Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Squirrel, Virginia northern flying	Glaucomys sabrinus fuscus
Vole, rock	Microtus chrotorrhinus

Threatened:

Shrew, Dismal Swamp southeastern	Sorex longirostris fisheri

6. Molluscs:

Endangered:

Ghostsnail, thankless	Holsingeria unthanksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio cordatum	Pleurobema
Pigtoe, pyramid	Pleurobema rubrum
Snuffbox	Epioblasma triquetra
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fonitgens morrisoni
Spectaclecase	Cumberlandia monodonta
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pearlymussel, slabside	Lexingtonia dolabelloides
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta

Sheepnose	Plethobasus cyphyus
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

Crayfish, Big Sandy	Cambarus veteranus

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

4VAC15-20-140. Endangered species—definitions.

For the purposes of §§ 29.1-564 through 29.1-570 of the Code of Virginia, 4VAC15-20-130 ~~of this chapter,~~ and this section:

1. "Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range within the Commonwealth, other than a species of the class Insecta deemed to be a pest whose protection would present an overriding risk to the health or economic welfare of the Commonwealth.

2. "Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, without limitation, and includes any part, products, egg, or the dead body or parts of it.

3. "Harass," in the definition of "take," means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

4. "Harm," in the definition of "take," means an act which actually kills or injures wildlife. Such act may include significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

5. "Person" means any individual, firm, corporation, association or partnership.

~~6. "Special concern" means any species, on a list maintained by the director, which is restricted in distribution, uncommon, ecologically specialized or threatened by other imminent factors.~~

~~7.~~ 6. "Species" includes any subspecies of fish or wildlife and any district population segment of any species or vertebrate fish or wildlife which interbreed when mature.

~~8.~~ 7. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess or collect, or to attempt to engage in any such conduct.

~~9.~~ 8. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

2010 List of Native and Naturalized Fauna of Virginia, Virginia Department of Game and Inland Fisheries.

VA.R. Doc. No. R11-2589; Filed December 30, 2010, 10:58 a.m.

Final Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (adding 4VAC15-20-75).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) provide that, upon receipt from a state participating in the interstate Wildlife Violator Compact (WVC) of a report of a conviction in that state of a Virginia resident, the Virginia Department of Game and Inland Fisheries (DGIF) would enter the conviction in its records and treat it as though it had occurred in the Commonwealth, including for purposes of suspension of hunting, fishing, and trapping license privileges; (ii) provide that, upon receipt from a WVC-participating state a report of other related events such as the failure of a Virginia resident to comply with the terms of a citation issued in that state, or the suspension of license privileges issued to a Virginia resident by that state, DGIF would initiate certain actions, to include possible suspension of

the Virginia resident's license or licenses issued in Virginia; (iii) provide for certain notification and procedural requirements in relation to these actions; (iv) establish procedures for DGIF to report to WVC-participating states convictions or failures to comply with citations in Virginia by residents of those respective states; and (v) authorize the director of DGIF to appoint an administrator to represent Virginia on the interstate WVC Board of Compact Administrators.

Changes from the proposed regulation (i) emphasize that the suspension of a license of a resident of the Commonwealth will occur only in accordance with the Code of Virginia; and (ii) provide that a person not satisfied with the decision resulting from an informal fact-finding proceeding may appeal to a three-member panel appointed by the director.

4VAC15-20-75. Wildlife Violator Compact.

A. This section is adopted pursuant to authority granted to the Board of Game and Inland Fisheries under §§ 29.1-103 and 29.1-530.5 of the Code of Virginia.

B. Definitions used herein unless the contrary is clearly indicated are those used in § 29.1-530.5 of the Code of Virginia, the Wildlife Violator Compact, herein referred to as the compact.

C. In accordance with Article VII of the compact, the board hereby authorizes the Director of the Department of Game and Inland Fisheries to appoint the Commonwealth's representative to the Board of Compact Administrators. Such appointment shall be consistent with and subject to the aforesaid provisions of the compact and such representative shall serve at the pleasure of the director.

D. In accordance with Article IV of the compact, upon receipt from a participating state of a report of the conviction in that state of a resident of the Commonwealth, the department shall enter such conviction in its records and such conviction shall be treated as though it had occurred in the Commonwealth and therefore as a violation of the board's applicable regulations for purposes of suspension of license privileges.

E. In accordance with Article IV of the compact, upon receipt from a participating state of a report of the failure of a resident of the Commonwealth to comply with the terms of a citation issued by that state, the department shall notify such person of that report in accordance with the procedures set forth in subsections G through J of this section and shall initiate a proceeding to suspend any applicable licenses issued to such person by the board until the department has received satisfactory evidence of compliance with the terms of such citation.

F. In accordance with Article V of the compact, upon receipt from a participating state of a report of the suspension of license privileges of a resident of the Commonwealth issued by that state [~~,~~ that is in accordance with suspension of license pursuant to the Code of Virginia,] the department shall notify such person of that report in accordance with the procedures set forth in subsections G through J of this section and shall initiate a proceeding to suspend any applicable licenses issued to such person by the board until the department has received satisfactory evidence that such suspension has been terminated.

G. Upon receipt of a report pursuant to subsections D, E, or F of this section, the director or his designee shall provide notice thereof to the resident of the Commonwealth who is the subject of such report. Such notice shall advise such person of the contents of the notice and of any action that the department proposes to take in response thereto.

H. The person who is the subject of such notice shall be provided an opportunity to request within 30 days from the date of such notice an opportunity to contest the department's proposed action by requesting an informal fact-finding conference to be conducted by a representative of the department designated by the director. Although such proceedings are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) as provided by § 2.2-4002 A 3 thereof, the department shall to the extent practicable afford such persons seeking an informal fact-finding conference the rights provided under § 2.2-4019 of the Code of Virginia. Those include but are not limited to the right to receive reasonable notice as described in subsection G of this section and the right to appear in person or by counsel before the designated representative of the department. However, no discovery shall be conducted and no subpoenas shall be issued as part of any such proceeding.

I. An informal fact-finding proceeding shall be completed within 60 days of receipt by the department of the request described in subsection H of this section. Upon such completion the designated representative of the department shall make a recommended [~~final~~] decision to the director or to such person designated by the director to make such [~~final~~] decision. The [~~final~~] decision maker shall promptly issue a written decision to the person who requested the proceeding. [~~Such decision shall constitute the final and nonappealable decision of the department.~~ If the affected party is not satisfied by this decision it may be appealed to a three member panel as appointed by the agency director.]

J. Any decision upholding the suspension of licensing privileges as a result of the process described in subsections D through I of this section shall be entered by the department on its records and shall be treated as though it had occurred in the Commonwealth and therefore as a violation of the board's applicable regulations.

K. The director shall establish procedures for reporting to participating states convictions or failures to comply with

citations in the Commonwealth by residents of those respective states. Such procedures shall comply with the reporting requirements established by and pursuant to the provisions of the compact.

VA.R. Doc. No. R10-2302; Filed December 30, 2010, 10:58 a.m.

Final Regulation

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments add all species of African dwarf frog (Hymenochirus spp. and Pseudohymenochiris merlini) to the list of predatory and undesirable species whose introduction into Virginia would be detrimental to the native fish and wildlife of the state, thereby prohibiting the importation, possession, or sale of these species without a permit.

4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:			
Order	Family	Genus/Species	Common Name
Anura	Buforidae	Bufo marinus	Giant or marine toad*
	Pipidae	Hymenochirus spp. Pseudohymenochiris merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrium mavortium	Barred tiger salamander
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander
BIRDS:			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH:			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas

	Cyprinidae	Aristichyhys nobilis	Bighead carp*
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodom piceus	Black carp*
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
Siluriformes	Clariidae	All species	Air-breathing catfish
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS:			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Protelidae	Proteles cristatus	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Lepus europeaeous	European hare
		Oryctolagus cuniculus	European rabbit
Rodentia		All species native to Africa	All species native to Africa

	Sciuridae	Cynomys spp.	Prairie dogs
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All species	Alligators, caimans*
	Colubridae	Boiga irregularis	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Orconectes rusticus	Rusty crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§ 2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

G. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R11-2590; Filed December 30, 2010, 10:57 a.m.

Final Regulation

Title of Regulation: **4VAC15-250. Game: Falconry (amending 4VAC15-250-10, 4VAC15-250-20, 4VAC15-250-60, 4VAC15-250-80; repealing 4VAC15-250-30, 4VAC15-250-40, 4VAC15-250-50, 4VAC15-250-70, 4VAC15-250-100, 4VAC15-250-110).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments update Virginia's falconry regulations to improve consistency with new federal falconry regulations and to provide expanded opportunities to take falcons from the wild.

4VAC15-250-10. ~~Definitions~~ Falconry; adoption of federal standards, regulations, and definitions.

[As used in this chapter:]

~~1.~~ ["Raptor" means any] ~~live migratory~~ [bird of the order Falconiformes or the order Strigiformes,] ~~other than a bald eagle (Haliaeetus leucocephalus)~~ [including hybrids thereof.]

~~2. "Permittee" means any holder of a valid falconry permit issued by Virginia or any other state or federal agency authorized to issue such permits or licenses.~~

~~3. "Take" means to trap, capture or attempt to trap or capture a raptor for the purposes of falconry.~~

The board hereby adopts the federal definitions, regulations, and standards pertaining to falconry as contained in 50 CFR 21.3 (definitions; effective July 8, 1983, and as amended June 17, 1999; August 10, 2006; February 28, 2007; August 20, 2007; October 8, 2008; and January 7, 2010) and 50 CFR 21.29 (falconry standards and falconry permitting; effective October 8, 2008, and as amended December 8, 2009; January 7, 2010; and January 21, 2010). Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to these federal definitions, regulations, and standards in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

4VAC15-250-20. Permit conditions.

A. An applicant for a permit to practice falconry pursuant to § 29.1-419 of the Code of Virginia shall submit to the department a completed application form, provided by the department and approved by the United States Fish and Wildlife Service, including all required information indicated on such form.

B. A permit shall not be issued before applicant has answered correctly at least 80% of the questions on a supervised examination provided by the department and approved by the United States Fish and Wildlife Service.

C. A permit shall not be issued or renewed unless applicant has adequate facilities and equipment, which shall have been inspected and certified by a representative of the department as meeting federal standards set forth in 50 CFR ~~21.21 et seq.~~ 21.29.

D. A person who is a nonresident of the Commonwealth may engage in falconry in Virginia provided he possesses a valid Virginia nonresident hunting license and satisfactory evidence that such person legally possesses the raptor and a valid falconry permit issued by ~~the~~ his state, tribe, or territory of residence. Such practitioners must nonetheless comply with all applicable hunting and falconry regulations and conditions of Virginia's Falconry Permit.

4VAC15-250-30. ~~Classes of permits.~~ (Repealed.)

~~A. Apprentice class.~~

~~1. Permittee shall be at least 14 years old.~~

~~2. A sponsor who is a holder of a general or master falconry permit is required for the first two years in which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three apprentices at any one time.~~

~~3. Permittee shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period.~~

~~4. Permittee shall possess only the following raptors, which must be taken from the wild: an American Kestrel; a red-tailed hawk; or a red-shouldered hawk.~~

~~B. General class.~~

~~1. Permittee shall be at least 18 years old.~~

2. Permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent.

3. Permittee may not possess more than two raptors and may not obtain more than two raptors for replacement birds during any 12-month period.

4. Permittee may not take, transport, or possess any golden eagle or any species listed as threatened or endangered in federal regulations published pursuant to the Endangered Species Act of 1973, as amended. Permittee may not take, transport, or possess any species listed as threatened or endangered under 4VAC15-20-130 unless authorized via a falconry permit issued by the department.

C. Master class.

1. Permittee shall have at least five years experience in the practice of falconry at the general class level or its equivalent.

2. Permittee may not possess more than three raptors and may not obtain more than two raptors taken from the wild for replacement birds during any 12-month period.

3. Permittee may not take, transport or possess any golden eagle for falconry purposes, nor any species listed as threatened or endangered in federal regulations published pursuant to the Endangered Species Act of 1973, as amended, unless authorized in writing by the department and the United States Fish and Wildlife Service. Permittee may not take, transport or possess any species listed as threatened or endangered under 4VAC15-20-130 unless authorized via a falconry permit issued by the department.

4VAC15-250-40. ~~Transportation and temporary holding.~~ (Repealed.)

~~A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.~~

4VAC15-250-50. ~~Marking.~~ (Repealed.)

~~A. All peregrine falcons (Falco peregrinus), gyr falcons (Falco resticolus), and Harris hawks (Parabuteo unicunctus), except a captive bred raptor lawfully marked by a numbered, seamless band issued by the U.S. Fish and Wildlife Service, must be banded with a permanent, nonreusable, numbered band supplied by the U.S. Fish and Wildlife Service.~~

~~B. It shall be unlawful for any person to alter, counterfeit or deface a raptor marker furnished by the United States Fish and Wildlife Service, except that falconry permittees may remove the rear tab on markers furnished, and may smooth any imperfect surface provided the integrity of the marker and numbering are not affected.~~

~~C. A permittee may replace the numbered seamless band on a captive bred bird with a standard adjustable yellow marker furnished by the Fish and Wildlife Service; however, once the seamless marker is removed, the bird may no longer be purchased, sold, or bartered.~~

4VAC15-250-60. Taking of raptors by nonresidents.

~~A. Young birds not yet capable of flight (eyases) may be taken only by a general or master falconer, and not more than two such birds may be taken by the same permittee during any one calendar year. The open season for taking such birds is May 1 through June 30 of each year only.~~

~~B. In addition, there shall be an open season for taking first-year passage birds, also called passengers (hawks caught wild before first moult), from September 15 through January 11 of each year only; except, that marked raptors may be retrapped at any time.~~

~~C. Only American Kestrels and great horned owls may be taken under a falconry permit when over one year old, except that any raptor other than an endangered or threatened species taken under a depredation (or special purpose) permit may be used for falconry by general and master falconers.~~

~~D.~~ A ~~nonresident raptor trapping~~ permit may be issued to ~~applicants~~ a nonresident general or master falconer for the purpose of taking a raptor in Virginia, provided that ~~his resident state is a state listed in Paragraph (k), of 50 CFR 21.29, as a participating state, and~~ his resident state, tribe, or territory issues nonresident falconry permits or licenses, or otherwise provides for the taking of raptors by nonresidents. ~~Nonresident applicants~~ A nonresident applicant shall submit a copy of ~~a~~ his valid ~~resident state~~ falconry permit and a copy of ~~a~~ his valid import permit from ~~their~~ his resident state, tribe, or territory. ~~Nonresident permits shall be issued only in the general or master class.~~

~~E. A permittee may purchase, sell, or barter any lawfully possessed raptor which was bred in captivity under authority of a raptor propagation permit issued under Part 21.30, Chapter I of Title 50, CFR, and banded with a numbered seamless marker issued or authorized by the Fish and Wildlife Service.~~

4VAC15-250-70. ~~Possession of raptors.~~ (Repealed.)

~~A. A person who possesses a lawfully acquired raptor before the enactment of this chapter and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the United States Fish and Wildlife Service and cannot be replaced if death, loss, release, or escape occurs.~~

~~B. A person who possesses raptors before the enactment of this chapter, in excess of the number allowed under his class permit, shall be allowed to retain the extra raptors. All such birds shall be identified with markers supplied by the United States Fish and Wildlife Service and no replacement can occur, nor may an additional raptor be obtained, until the~~

~~number in possession is at least one less than the total number authorized by the class of permit held by the permittee.~~

~~C. A falconry permit holder shall obtain written authorization from the department before any species not indigenous to Virginia is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released bird which is indigenous shall also be removed and surrendered to the department. A standard federal bird band shall be attached to such birds by a state or United States Fish and Wildlife Service authorized federal bird bander whenever possible.~~

~~D. A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed 30 days. The raptor must be accompanied at all times by a properly executed U.S. Fish and Wildlife Service authorization (currently USFWS form 3-186A) designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing temporary possession.~~

~~E. Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping purposes.~~

4VAC15-250-80. Season for ~~raptor~~ hunting with raptors.

It shall be lawful to hunt nonmigratory game birds and game animals with raptors from October 1 through March 31, both dates inclusive.

4VAC15-250-100. ~~Out of season, wrong species or sex, kills by raptors.~~ (Repealed.)

~~A permittee whose raptor accidentally kills quarry that is out of season or of the wrong species or sex, or otherwise protected, must leave the dead quarry where it lies; except, that the raptor may feed upon the quarry prior to leaving the site of the kill.~~

4VAC15-250-110. ~~Reports by permit holders; inspections~~ [~~Inspections.~~ (Repealed.)]

~~No permittee may take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits a properly executed U.S. Fish and Wildlife Service authorization (currently USFWS form 3-186A) to the issuing office within five calendar days of any transaction. Falcons, hawks and owls held under permit~~ [~~Falconry facilities, equipment, and raptors shall be open to inspection by representatives of the department at all times.~~]

VA.R. Doc. No. R11-2591; Filed December 30, 2010, 10:57 a.m.

Final Regulation

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25, 4VAC15-320-90; repealing 4VAC15-320-130).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) adjust freshwater fishing creel and length limits; (ii) add the James River to the list of waters where a National Forest Permit is not required to fish from national forest lands; and (iii) eliminate the "only bait with a single point hook (no artificial lures allowed)" requirement for the Witcher Creek (Cedar Key cove) area on Smith Mountain Lake.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate; No statewide length limits	**Lakes**	
			Briery Creek Lake	No bass 14 to 24 inches, only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches

			Claytor Lake	No bass less than 12 inches
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mt. Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell counties	No bass 11 to 14 inches
			Dan River and tributaries down stream from the Brantley Steam Plant, Danville	Only 2 of 5 bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA – WV state line and its tributary Little River downstream from Little River Dam in Montgomery County (This does not include Claytor Lake which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA-TN state line	No bass less than 20 inches, only 1 per day longer than 20 inches

			North Fork Shenandoah River – Rt. 42 bridge, Rockingham Co. downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte Co.	Only 2 of 5 bass less than 14 inches
			Shenandoah River –	
			Confluence of South Fork and North Fork rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
			Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
			South Fork Shenandoah River -	
			Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
			Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches
			<u>Staunton River -</u>	
			<u>Leesville Dam (Campbell County) downstream to the U.S. Route 360 Bridge (Halifax/Charlotte County Line) near Clover, VA</u>	<u>No bass less than 20 inches, only 1 per day longer than 20 inches</u>

striped bass	landlocked striped bass and landlocked striped bass x white bass hybrids	4 per day in the aggregate; No fish less than 20 inches	Buggs Island (Kerr) reservoir including the Staunton River to Leesville Dam and the Dan River to Brantly Steam Plant (Danville)	October 1 - May 31: 2 per day in the aggregate; No striped bass or hybrid striped bass less than 26 inches; June 1 - September 30: 4 per day in the aggregate; No length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate; ~~October~~ November 1 - May 31: No striped bass 26 to 36 inches; June 1 - ~~September 30~~ October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day; No striped bass less than 18 inches		
white bass		5 per day; No statewide length limits		

walleye		5 per day; ~~No statewide length limits~~ No walleye less than 18 inches	~~Flannagan, Philpott, and South Holston reservoirs, and the Middle Fork Holston and South Fork Holston rivers~~	~~No walleye less than 18 inches~~
			~~Claytor Lake and New River upstream of Claytor Lake Dam~~ New River upstream of Buck Dam in Carroll County	No walleye less than 20 inches
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	February 1 - May 31: 2 walleye per day; no walleye 19 to 28 inches; June 1 - January 31: 5 walleye per day; no walleye less than 20 inches
sauger		2 per day; No statewide length limits		
chain pickerel		5 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs	No daily limit
northern pike		2 per day; No pike less than 20 inches		
muskellunge		2 per day; No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to the VA - WV state line, including Claytor Lake	1 per day No muskellunge less than 42 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Flannagan and South Holston reservoirs	No crappie less than 10 inches

rock bass (redeye)		25 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County.	No daily limit
			Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with Roanoke bass; No rock bass less than 8 inches
Roanoke bass		No statewide daily limit; No statewide length limits	Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with rock bass; No Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day, only 1 blue catfish per day longer than 32 inches	All rivers below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
	yellow, brown, and black bullheads	No daily limit; No length limits		
American shad and hickory shad	James River above the fall line (14th Street Bridge), the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River above Harvell Dam, the Pamunkey River and the Mattaponi River above the Rt. 360 bridge, and the Rappahannock River above the Rt. 1 bridge, and Virginia waters of Lake Gaston and Buggs Island (Kerr) Reservoir and tributaries to include the Dan and Staunton rivers	No possession (catch and release only)		
	(below the fall line) in tidal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		

	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	10 per day in the aggregate No length limits		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	No possession		
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

4VAC15-320-90. Exception to requirement of national forest permit.

A national forest permit, as provided for in § 29.1-408 of the Code of Virginia shall not be required to fish from national forest lands in the North and South forks of the Shenandoah River, in the James River, in Skidmore Lake in Rockingham County, in Lake Moomaw (Gathright Project), in the Jackson River below Gathright Dam, in North Fork Pound Reservoir, and in Wilson Creek downstream of Douthat Lake in Alleghany and Bath Counties.

4VAC15-320-130. ~~Special provision applicable to a portion of Witcher Creek (Cedar Key) within Smith Mountain Lake.~~ (Repealed.)

~~It shall be lawful to fish using only bait with a single point unweighted bait hook (no artificial lures allowed) in that portion of Witcher Creek in Smith Mountain Lake from behind the no wake buoy line at the mouth of the cove known as Cedar Key to the back of the cove from April 15 to May 31, both dates inclusive. For the purpose of this chapter, a single point unweighted bait hook is defined as a hook that does not have a weight affixed to the hook. Any other weight must be attached to the line at least 12 inches above the hook (no weights below the hook).~~

VA.R. Doc. No. R11-2592; Filed December 30, 2010, 10:57 a.m.

Final Regulation

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-120, 4VAC15-330-140, 4VAC15-330-150, 4VAC15-330-160, 4VAC15-330-171; adding 4VAC15-330-175).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments adjust trout fishing requirements on multiple sections of trout waters within the Commonwealth.

4VAC15-330-120. Special provisions applicable to certain portions of Buffalo Creek, Dan River, Pound River, Roaring Run, ~~Smith River~~ South River, and South Fork Holston River.

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of ~~Smith River in Henry County from signs below the east bank of Towne Creek downstream to the State Route 666 (Trent Hill Road) bridge~~ South River from the N. Oak Lane Bridge in Waynesboro upstream to a sign posted 1.5 miles above the State Route 632 (Shalom Road) Bridge, in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir, in that portion of the Pound River from a sign posted 0.4 miles below the Flannagan Dam, downstream 1.2 miles to a sign posted just upstream of the confluence of the Pound River and the Russell Fork River, in that portion of the South Fork Holston River in Smyth County from a sign posted at the upper Jefferson National Forest boundary downstream approximately four miles to a sign posted 500 feet upstream of the concrete dam at Buller Fish Culture Station, and in that portion of Roaring Run in Botetourt County from a sign posted at the third footbridge above the Roaring Run Furnace Day Use Area upstream approximately one mile to a sign posted at the Botetourt/Alleghany County line.

B. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

4VAC15-330-140. Special provision applicable to certain portions of Big Wilson Creek, Cabin Creek, Conway River, Little Stony Creek, Little Wilson Creek, Mill Creek, North Fork Buffalo River, St. Mary's River and Ramsey's Draft.

It shall be lawful to fish using only artificial lures with single hooks in that portion of the Conway River and its tributaries in Greene and Madison Counties within the Rapidan Wildlife Management Area, in that portion of Big and Little Wilson Creeks and their tributaries and Cabin Creek and its tributaries in Grayson County within the Grayson Highlands State Park and the Jefferson National Forest Mount Rogers National Recreation Area, in that portion of Little Stony Creek in Giles County within the Jefferson National Forest, in that portion of Little Stony Creek in Shenandoah County within the George Washington National Forest, in Mill Creek and its tributaries upstream of the Poplar Street Bridge in the Town of Narrows (Mill Creek flows through the Town of Narrows and Jefferson National Forest in Giles County), in the North Fork Buffalo River and its tributaries in Amherst County within the George Washington National Forest, in that portion of St. Mary's River in Augusta County and its tributaries upstream from the gate at the George Washington National Forest property line, and in that portion of Ramsey's Draft and its tributaries in Augusta County within the George Washington National Forest. All trout caught in these waters under nine inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under nine inches in length while in these areas.

4VAC15-330-150. Special provision applicable to Stewarts Creek Trout Management Area; certain portions of Dan, Rapidan, South Fork Holston and Staunton rivers, the East Fork of Chestnut Creek, Roaring Fork, North Creek, Spring Run, Venrick Run, Brumley Creek, and their tributaries.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within the Stewarts Creek Trout Management Area in Carroll County, in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County, in the Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County, in the East Fork of Chestnut Creek (Farmer's Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties, in Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County and in that section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County, and in North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County, in Spring Run from it confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County, in Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County, and in Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County. All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Chestnut Creek, Hardware River, Holliday Creek, Holmes Run, North River, Passage Creek, Peak Creek, Pedlar River, North Fork of Pound and Pound rivers, Roanoke River, and South River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from King Arthur Road downstream 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in the Hardware River (Fluvanna County) from the Route 646 bridge upstream ~~2.6~~ 3.0 miles to Muleshoe Bend as posted, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge, and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the City of Waynesboro. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

4VAC15-330-171. Special provisions applicable to certain portions of Jackson River.

A. ~~The~~ In that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Allegheny County, the daily creel limit shall be four trout per day and only one of the four may be a brown trout, the minimum size limit for brown trout shall be ~~12~~ 20 inches in length ~~on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County~~, and the protected slot limit for rainbow trout shall be 12 to 16 inches. All brown trout caught in this section of the Jackson River under ~~12~~ 20 inches in length and all rainbow trout between 12 and 16 inches in length caught in this section of Jackson River shall be immediately returned to the water. It shall be unlawful for any person to ~~have in his possession~~ possess any brown trout under ~~12~~ 20 inches in length or any rainbow trout between 12 and 16 inches in length in this area. Because of the 12-inch to 16-inch protected slot limit for rainbow trout, the statewide seven-inch minimum trout limit does not apply to rainbow trout in this section of Jackson River.

B. The trout daily creel limit shall be two, the minimum size limit shall be 16 inches in length, and only artificial lures may be used in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS 481D. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

4VAC15-330-175. Special provisions applicable to certain portions of Smith River.

In that portion of the Smith River from Philpott Dam downstream to the State Route 636 Bridge crossing (Mitchell Bridge), the protected slot limit for brown trout shall be 10 to 24 inches and only one brown trout longer than 24 inches can be harvested per day. All brown trout caught in this section of Smith River between 10 and 24 inches in length must be immediately returned to the water unharmed. It shall be unlawful for any person to possess any brown trout between 10 and 24 inches or more than one brown trout longer than 24 inches in length in this section of Smith River. Because of the 10-inch to 24-inch protected slot limit for brown trout, the statewide seven-inch minimum trout limit does not apply to brown trout in this section of Smith River. Statewide creel and size limits shall apply to all other trout species caught in this section of the Smith River, and the statewide daily creel limit of six trout per day applies to all trout species combined, in aggregate.

VA.R. Doc. No. R11-2593; Filed December 30, 2010, 10:56 a.m.

Final Regulation

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc (amending 4VAC15-350-10, 4VAC15-350-60; repealing 4VAC15-350-80).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) add the use of SCUBA (Self-Contained Underwater Breathing Apparatus) gear as an unlawful method of taking or attempting to take freshwater fish; (ii) limit the number of jugs that an angler may set and retrieve, and require that jugs be labeled with a reflective marker and attended within sight by anglers at all times; and (iii) eliminate dulling and noosing as fishing methods to take suckers in Highland County.

4VAC15-350-10. Gigs, grab hooks, etc.; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be unlawful to take or attempt to take fish at any time by snagging, grabbing, snaring, and gigging~~, and~~; with a striking iron; and with the use of SCUBA (Self-Contained Underwater Breathing Apparatus) gear.

4VAC15-350-60. Trotlines, juglines or set poles.

A. Generally. Except as otherwise provided by local legislation and by ~~subsection~~ subsections B and C of this section, and except on waters stocked with trout and within 600 feet of any dam, it shall be lawful to use trotlines, juglines (single hook, including one treble hook, and line attached to a float) or set poles for the purpose of taking nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) and turtles (limits for turtles are found in 4VAC15-360-10), provided that no live bait is used. Notwithstanding the provisions of this section, live bait other than game fish may be used on trotlines to take catfish in the Clinch River in the Counties of Russell, Scott and Wise. Any person setting or in possession of a trotline, jugline or set pole shall have it clearly marked by permanent means with his name, address and telephone number, and is required to check all lines at least once each day and remove all fish and animals caught. This requirement shall not apply to landowners on private ponds, nor to a bona fide tenant or lessee on private ponds within the bounds of land rented or leased ~~by him~~, nor to anyone transporting any such device from its place of purchase.

B. Quantico Marine Reservation. It shall be unlawful to fish with trotlines in any waters within the confines of Quantico Marine Reservation.

C. Additional jugline requirements. Jugline sets (except as exempt under subsection A of this section) shall be restricted to 20 per angler and must be attended (within sight) by anglers at all times. Also, in addition to being labeled with the angler's name, address and telephone number, jugs shall also be labeled with a reflective marker that encircles the jugs to allow for visibility at night.

4VAC15-350-80. ~~Dulling suckers in Highland County.~~ (Repealed.)

~~It shall be lawful to take suckers in the daytime only with a dull or noose in Highland County from December 1 through February 28, both dates inclusive.~~

VA.R. Doc. No. R11-2594; Filed December 30, 2010, 10:56 a.m.

Final Regulation

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments reduce the recreational daily bag limit on snapping turtles, prohibit the collection of freshwater mussels statewide, and allow the unlimited collection of Asian clams statewide.

4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4VAC15-20-130, subdivision 8 of 4VAC15-320-40 and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed below:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, bowfin, longnose gar, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, ~~and~~ goldfish, and Asian clams.

2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders (each under six inches in total length), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs shall be 15 and for snapping turtles shall be ~~15 and bullfrogs~~ 5. Bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken in any number for private use: candy darter, eastern hellbender, diamondback terrapin, and spotted turtle.

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

a. Period of captivity does not exceed 30 days;

b. Animals must be liberated at the site of capture;

c. Animals must have been housed separately from other wild-caught and domestic animals; and

d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A may only be taken by hand, hook and line, with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet square, small minnow traps with throat openings no larger than one inch in diameter, cast nets, and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take ~~mussels and~~ the spiny riversnail (Io fluvialis) in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels ~~in the James River and tributaries west of U.S. Route 29, in the entire North Fork of the Shenandoah River, and in the entire Nottoway River~~ from any inland waters of the Commonwealth.

D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

VA.R. Doc. No. R11-2595; Filed December 30, 2010, 10:56 a.m.

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REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 (Boating Laws) of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia. Regulations promulgated pursuant to Article 1 of Chapter 5 of Title 29.1 (Wildlife Management Regulations) are exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia.

Final Regulation

Title of Regulation: **4VAC15-370. Watercraft: in General (amending 4VAC15-370-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-701 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendment changes the minimum width, from three inches to two inches, required for each of two horizontal bands of international orange that are required around the circumference of buoys that are used as regulatory

markers on public waters. The amendment makes this requirement under state regulation consistent with United States Coast Guard standard specifications for aids to navigation and regulatory markers.

4VAC15-370-50. Regulatory markers and aids to navigation.

A. Under the provisions of Chapter 7 of Title 29.1 of the Code of Virginia a system of regulatory markers and a lateral buoyage marking system of aids to navigation are hereby adopted on all public waters of the Commonwealth not marked by an agency of the United States. Regulatory markers will be white with international orange bands. A vertical open-faced diamond shape with a white center shall denote danger. A vertical open-faced diamond shape with an inside cross shall denote a prohibition of all vessels. A circular shape with a white center shall denote a control or restriction. A rectangular shape shall denote information other than a danger, control or restriction. No regulatory marker, aid to navigation or other waterway marker affecting the safety, health or well-being of a boat operator, excepting those placed by an agency of the United States or a political subdivision of this Commonwealth as authorized in § 29.1-744 D of the Code of Virginia, shall be placed in, on or near the water unless authorized by the department.

B. When buoys are used as regulatory markers, they shall be white with horizontal bands of international orange, having a minimum width of ~~three~~ two inches, placed completely around the buoy circumference. One band shall be at the top of the buoy, with a second band placed just above the waterline so that both bands are clearly visible to approaching watercraft. The area of the buoy body visible between the two bands shall be white and not less than 12 inches in height. No buoy shall be less than 24 inches in overall height from the waterline.

C. Where a regulatory marker consists of a sign displayed from a marine structure, post or piling, the sign shall be white, with an international orange border having a minimum width of three inches. The geometric shape associated with the meaning of the marker shall be centered on the signboard.

D. The size of the display area shall be as required by circumstances, except that no display area shall be smaller than one foot in height. The outside width of the diamond, the inner diameter of the circle, and the average of the inside and outside widths of a square shall be two-thirds of the display area. The side of the diamond shall slope at a 35° angle from the vertical on the plane surface. Approximate adjustments for curvature may be made when applied to a cylindrical surface.

E. Explanatory words may be added outside the diamond with a center cross, the open diamond and the no wake circle on fixed markers only, and shall be added to the inside of the circle, square and rectangle. The letters of such words shall be black, in block characters of good proportion, spaced in a manner that will provide maximum legibility, and of a size that will provide the necessary degree of visibility. Applicable words include, but are not limited to:

1. Open faced diamond: rock, snag, cable, dam, dredge, shoal, reef, wreck.

2. Diamond with cross: dam, swim area, rapids, no boats.

3. Circle: no skiing, no wake, no anchoring, no fishing, no scuba, no boats, ski only, fishing only, for wording inside the circle; and entering no wake zone, leaving no wake zone, for wording outside the circle.

4. Square or rectangle: information other than a danger, control or restriction, which may contribute to health, safety, or well-being of boaters, such as place names, arrows indicating availability of gas, oil, groceries, marine repairs, limits of controlled areas, or approaching controlled area.

F. Waterway markers shall be made of materials that will retain the characteristics essential to their basic significance, such as color, shape, legibility and position, despite weather or other exposures.

G. Regulatory markers shall be placed where they are reasonably visible from boats approaching the marker and the visibility of the marker shall be maintained.

H. Written approval of the department must be obtained before relocation of any marker.

I. The person responsible for the marker shall immediately notify the department when any approved marker is removed or destroyed. Such marker shall be replaced without unnecessary delay.

J. After notification to the person responsible for the marker, the department may cancel for reasonable cause any marker authorization. Such marker shall be removed by the person responsible for the marker without unnecessary delay. Should the marker not be removed within a reasonable amount of time, the department may remove the marker or have it removed at the expense of the person responsible for the marker.

K. The political subdivision or agency making application shall certify that the markers to be installed conform to the above provisions.

L. It shall be unlawful to enter, use, or occupy public waters for a purpose contrary to the use indicated on markers authorized by the department, or placed by an agency of the Unites States or a political subdivision of this Commonwealth.

M. It shall be unlawful to moor or attach a vessel to a marker other than an approved mooring buoy, or move, remove, displace, tamper with, damage or destroy a marker

authorized by the department, placed by an agency of the United States or placed by a political subdivision of this Commonwealth.

VA.R. Doc. No. R11-2597; Filed December 30, 2010, 10:55 a.m.

Final Regulation

Title of Regulation: **4VAC15-390. Watercraft: Safe and Reasonable Operation of Vessels (amending 4VAC15-390-130).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-701 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendment repeals the requirement for vessels of less than 65.4 feet in length to have a bell on board.

4VAC15-390-130. Standard whistle and horn signals.

A. Whenever vessels are approaching in a meeting, crossing, or overtaking situation, and it appears desirable to the operator of one of the vessels to communicate his intentions to the operator of the other, the following standard whistle or horn signals will be used, and none other:

1. One short blast; meaning: "I am altering my course to the right"; except that in a crossing situation when this signal is initiated by the vessel to the right of the other it means, "I am holding my course and speed."

2. Two short blasts; meaning: "I am altering my course to the left."

3. Three short blasts; meaning: "I am stopping, or backing, by applying power astern."

4. Five or more short blasts in rapid succession; meaning: "DANGER"; or "I do not understand your intentions"; or "I do not concur in the maneuver indicated by your signal."

B. Whenever a motorboat less than 65.6 feet long receives one of the above signals from an approaching vessel, and if the operator understands the signal and concurs in the maneuver, he will answer with a similar signal. Whenever the intention of the approaching vessel is unclear, or if the proposed maneuver appears to involve risk of collision or other danger, the operator of the motorboat receiving the signal will answer with five or more short blasts in rapid succession, whereupon the operators of both vessels will slow, stop, or change course as necessary to avoid collision.

C. Signals in or near an area of restricted visibility or when the operator's vision is obscured by fog or other weather conditions shall be one prolonged blast of intervals of not more than two minutes for motorboats, and one prolonged plus two short blasts of intervals of not more than two minutes by sailboats under sail alone.

D. A vessel of 39.4 feet (12 meters) or more in length shall be provided with a whistle ~~and a bell~~ that meets U.S. Coast Guard requirements. ~~The bell may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.~~ A motorboat of less than 39.4 feet (12 meters) shall not be obligated to carry a whistle or bell as required above, but the operator shall have a whistle or other device intended to make audible signals capable of being heard 0.5 mile.

E. The operators of vessels not required to have sound-producing devices on board are not required to give or answer horn to whistle signals, but if they have sound-producing devices on board and elect to give or answer signals, the standard signals prescribed above shall be used, and none other.

VA.R. Doc. No. R11-2599; Filed December 30, 2010, 10:55 a.m.

Final Regulation

Title of Regulation: **4VAC15-410. Watercraft: Boating Safety Education (amending 4VAC15-410-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-701 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) establish that a license to operate a vessel issued to maritime personnel by the United States Coast Guard, a marine certificate issued by the Canadian government, or a Canadian Pleasure Craft Operator's Card, is considered valid regardless of whether the license is current; and (ii) clarify that "a nonresident temporarily using the waters of Virginia" for 90 days or less means operating a boat not registered in Virginia.

4VAC15-410-40. Provisions for compliance and minimum standards for boating safety education course competency.

A. A person shall be considered in compliance with the requirements for boating safety education if he meets one or more of the following provisions pursuant to § 29.1-735.2 B 1 through 9 of the Code of Virginia:

1. Completes and passes a boating safety education course;

2. Passes an equivalency exam;

3. Possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card. For the purposes of this subsection a license is considered valid regardless of whether the license is current;

4. Possesses a temporary operator's certificate;

5. Possesses a rental or lease agreement from a motorboat or personal watercraft rental or leasing business that lists the person as the authorized operator of the motorboat;

6. Operates the motorboat under onboard direct supervision of a person who meets the requirements of this section;

7. Is a nonresident~~, is~~ temporarily using the waters of Virginia for a period not to exceed 90 days (which means operating a boat not registered in Virginia), and meets any applicable boating safety education requirements of the state of residency, or possesses a Canadian Pleasure Craft Operator's Card;

8. Has assumed operation of the motorboat or personal watercraft due to the illness or physical impairment of the initial operator, and is returning the motorboat or personal watercraft to shore in order to provide assistance or care for the operator; or

9. Is registered as a commercial fisherman pursuant to § 28.2-241 of the Code of Virginia or is under the onboard direct supervision of the commercial fisherman while operating the commercial fisherman's boat.

B. The minimum standards for boating safety education course competency required by the department are:

1. Successful completion of a classroom boating safety education course in person and a passing score of at least 70% on a written test administered closed-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

2. Successful completion of a classroom boating safety education course in person and a passing score of at least 90% on a written test administered open-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

3. Successful completion of a boating safety education course offered through the Internet or through an electronic format such as CD-ROM and a passing score of at least 90% on a self-test administered in conjunction with the course material; or

4. A score of at least 70% on a proctored equivalency exam.

VA.R. Doc. No. R11-2600; Filed December 30, 2010, 10:55 a.m.

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-10).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: January 1, 2011, through January 30, 2011.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

This emergency chapter establishes, for the public health, harvest restrictions for shellfish taken from Virginia waters during the months of May through September. In addition, this emergency chapter describes a method of identifying, with the use of tags, where any shellfish were originally harvested from Virginia waters at any time. This emergency chapter is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-210 and 28.2-801 of the Code of Virginia. This emergency chapter amends and readopts, as amended, previous 4VAC 20-1230, which was adopted September 28, 2010, and made effective January 1, 2011. The effective date of this emergency chapter is January 1, 2011.

Summary:

This amendment clarifies that identification of the original harvest area of any shellfish, through use of tags, pertains to any time during the year.

4VAC20-1230-10. Purpose.

The purpose of this emergency chapter is to establish a method of identifying the original Virginia harvest area of any shellfish~~,~~ at any time of the year. In addition, harvest times~~,~~ and handling procedures for shellfish harvested during the months of May through September, in order to protect the health of the public, are described herein.

VA.R. Doc. No. R11-2695; Filed December 22, 2010, 9:02 a.m.

VIRGINIA GAS AND OIL BOARD

Emergency Regulation

Title of Regulation: **4VAC25-165. Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes (adding 4VAC25-165-10 through 4VAC25-165-140).**

Statutory Authority: §§ 45.1-361.15 and 45.1-361.22:1 of the Code of Virginia.

Effective Dates: December 20, 2010, through December 19, 2011.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email michael.skiffington@dmme.virginia.gov.

Preamble:

Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (VGOB) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment. VGOB adopts its regulations through the Department of Mines, Minerals and Energy (DMME). This regulation establishes the guidelines for the arbitration process. Some of the key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration itself.

The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there is approximately $26 million in royalties held in escrow because conflicting claims of ownership have not yet been resolved. Creating an arbitration system that is an effective alternative to litigation can help reduce the amount of funds in escrow.

CHAPTER 165
REGULATIONS GOVERNING THE USE OF ARBITRATION TO RESOLVE COALBED METHANE GAS OWNERSHIP DISPUTES

4VAC25-165-10. Definitions.

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

"Accrued interest" means funds accrued during the preceding 36 months on total proceeds held in the general escrow account. Accrued interest does not include escrow account fees or administrative costs of the Board related to the general escrow account.

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Arbitrator" means a qualified individual appointed by a court to render a determination in an ownership dispute concerning coalbed methane gas.

"Board" means the Virginia Gas and Oil Board.

"Claimant" means person or entity in a dispute over ownership of coalbed methane has who has agreed to arbitration to resolve the dispute.

"Code" means Code of Virginia.

"Court" means a circuit court in the Commonwealth of Virginia wherein the majority of the subject tract of land is located.

"Department" means the Department of Mines, Minerals and Energy.

"Escrow account" means the account established by the board pursuant to §§ 45.1-361.21 and 45.1-361.22 (2) of the Code.

"Ex parte communication" means any form of communication between an arbitrator and a claimant without the presence of the opposing claimant.

"Operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

4VAC25-165-20. Authority and applicability.

This chapter implements the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code. The board is authorized to promulgate this chapter pursuant to §§ 45.1-361.15 and 45.1-361.22:1 of the Code.

4VAC25-165-30. Costs of arbitration.

Arbitrations shall be funded from accrued interest. The department shall determine on a case-by-case basis if sufficient funds exist to conduct an arbitration. Sufficiency of funds shall be determined by the amount of accrued interest available at the time arbitration is requested, less estimated costs of pending arbitrations. If sufficient funds are not available, the department shall maintain a waiting list of parties willing to arbitrate.

4VAC25-165-40. Qualification of arbitrators.

The department shall review all applications from potential arbitrators pursuant to § 45.1-361.22:1 C of the Code. Applications shall be submitted on a form prescribed by the department. In order to qualify, applicants must demonstrate substantial expertise in mineral title examination. Substantial expertise shall be determined on an individual basis. The department shall notify applicants deemed to be qualified.

The department shall maintain a list of qualified arbitrators and update it annually. The list shall be supplied to the court when the board issues an order for arbitration. Pursuant to § 45.1-361.22:1 C of the Code, the court has the discretion to appoint an individual not on the list of qualified arbitrators.

In order to maintain a current, accurate list, qualified arbitrators shall at least annually update their disclosures to the department.

4VAC25-165-50. Agreement to arbitrate.

Claimants shall submit their request of arbitration to the board on a form prescribed by the department. Claimants shall also provide an affidavit pursuant to § 45.1-361.22:1 A of the Code.

4VAC25-165-60. Conflicts of interest.

In addition to the limitations set forth in § 45.1-361.22:1 A of the Code, an arbitrator may not hear an arbitration if the arbitrator is related to one of the claimants, has a personal interest in the subject of the arbitration, has a present or former personal or business relationship with one of the claimants or other circumstances exist that might affect the arbitrator's ability to render a fair determination. If evidence of a conflict exists under this section, a claimant may petition the court to appoint a different arbitrator.

4VAC25-165-70. Location.

The arbitrator shall determine an appropriate time and place for the arbitration. The arbitration shall take place in the jurisdiction where the majority of the subject tract is located, unless all claimants agree to an alternate location. Notice to claimants shall be given pursuant to the requirements of § 45.1-361.22:1 D of the Code.

4VAC25-165-80. Postponement of arbitration.

Any request for postponement may be granted by the arbitrator if all claimants consent, or if good cause for a postponement is shown to the satisfaction of the arbitrator. Requests for postponement for cause should be made to the arbitrator at least 15 days before the hearing, unless the circumstances requiring the postponement do not allow 15 days' notice. Whenever a postponement is granted, the arbitrator will promptly reschedule the hearing and notify the board and the claimants.

4VAC25-165-90. Discovery.

Pursuant to §§ 8.01-581.06 and 45.1-361.22:1 D of the Code, the arbitrator may issue subpoenas, administer oaths, and take depositions. Additionally, any documents a claimant intends to introduce at the arbitration must be shared with the opposing claimant and the arbitrator not less than five days prior to the arbitration. If this provision is found not to be met, the arbitrator may elect to continue the arbitration.

4VAC25-165-100. Extension of arbitration.

If, pursuant to § 45.1-361.22:1 E of the Code, the claimants agree that the arbitrator may take longer than six months from the date the board ordered the arbitration to render a determination, the arbitrator shall notify the board of this extension.

4VAC25-165-110. Determination of arbitrator.

Pursuant to § 45.1-361.22:1 E of the Code, the determination of the arbitrator shall be in writing and sent to the board and each party to whom notice is required to be given. The determination shall include, at a minimum, a finding of facts and an explanation for the basis of the determination. A copy of the determination shall be placed on the department's website. The arbitrator shall record the determination with the Clerk's Office of the court.

4VAC25-165-120. Ex parte communications.

There shall be no direct communication between the claimants and the arbitrator concerning the merits of the dispute other than at the arbitration hearing. If an ex parte communication occurs between a party and the arbitrator outside of the arbitration hearing, the arbitrator shall notify the other parties of the date, time, place, and content of the communication.

4VAC25-165-130. Fees.

Arbitrators shall be paid at the rate of no more than $250 per hour. Expenses of the arbitrator incurred during the course of the arbitration shall be reimbursed in accordance with the State Travel Regulations prescribed by the Department of Accounts. Arbitrators shall submit a complete W-9 form to the department before payment is made.

Pursuant to § 45.1-361.22:1 F of the Code, payment of fees and expenses of the arbitration may be delayed if there are intervening disbursements from the general escrow account under § 45.1-361.22(5)(i) or (iii) of the Code that reduce the interest balance below the amount of fees and expenses requested.

4VAC25-165-140. Disbursement of proceeds.

Within 30 days of receipt of an affidavit from the claimants affirming the determination, the operator shall petition the board for disbursement pursuant to § 45.1-361.22 (5) of the Code.

NOTICE: The following forms used in administering the regulation have been filed by the Department of Mines, Minerals and Energy. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the form by clicking on the name of the form. The form is also available for public inspection at the Department of Mines, Minerals and Energy, 1100 Bank Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (4VAC25-165)

Arbitrator Qualification Form, DGO-ARB (rev. 5/10).

Agreement to Arbitrate Form, DGO-ARB2 (rev. 7/10).

VA.R. Doc. No. R11-2556; Filed December 20, 2010, 2:37 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-60. Rules Relating to Compulsory Minimum Training Standards for Dispatchers (amending 6VAC20-60-10, 6VAC20-60-20, 6VAC20-60-25; repealing 6VAC20-60-100).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information:

May 5, 2011 – 9 a.m. – General Assembly Building, 910 Capitol Street, House Room D, Richmond, VA

Public Comment Deadline: March 18, 2011.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Criminal Justice Services Board to adopt regulations for the administration of Chapter 1 (§ 9.1-100 et seq.) of Title 9.1 of the Code of Virginia. Subdivision 10 of § 9.1-102 authorizes the establishment of compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel.

Purpose: The purpose of the amendments is to enable standing committees to function more smoothly to achieve the goals and objectives for which they were created. Conducting annual reviews and adopting updates to training standards for dispatchers directly impacts the safety and welfare of citizens who call 9-1-1.

Substance: The amended regulation reconstitutes the Dispatcher Curriculum Review Committee from 13 to nine members due to the difficulties in getting a quorum for an annual meeting, transfers approval authority from the Criminal Justice Services Board to the Committee on Training to have the Committee on Training responsible for changes to all parts of the training standards, and incorporates the suggestions for change to the on-the-job training requirements proposed by the Dispatcher Curriculum Review Committee. Over 10 years of experience in working in the current manner strongly suggests all parties would be better served by having the Committee on Training handle all suggested changes to the training standards using the process set up in the rules. The same change in approval authority was recently approved through the fast-track process for the rules governing both entry-level law-enforcement training and entry-level jail/court security/civil process service training.

Issues: The advantages to the public and to the Commonwealth include a simpler, less costly, and less time consuming method for changing the performance outcome statement that is part of the training standards. This enables annual updates to be completed more efficiently and provides greater clarity to instructors and recruits involved in 9-1-1 dispatcher training. The safety and welfare of the public is paramount in setting forth training requirements while providing protection from incompetent or unqualified persons from performing dispatcher duties. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will 1) reduce the number of the Dispatcher Curriculum Review Committee from 13 to 9, 2) transfer the approval authority of the performance outcomes from the Criminal Justice Services Board to its standing committee on training, and 3) remove the performance outcomes from the regulations.

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

Estimated Economic Impact. Criminal Justice Services Board proposes to reduce the number of the Dispatcher Curriculum Review Committee from 13 to 9. According to the Department of Criminal Justice Services, it has been somewhat challenging to make sure that at least seven committee members are present at annual meetings so that decisions could be made. With the proposed reduction, only five members will be needed to approve decisions. In addition to the improved efficiency in decision making, approximately $1,000 is expected to be saved in terms of reduced reimbursable costs such as travel, lodging, and meal expenses as the number of members whose expenses are reimbursed is reduced.

Also, the board proposes to transfer the approval authority of the performance outcomes from the Criminal Justice Services Board to its standing committee on training. The proposed change will streamline the process by removing a redundant step in how the performance outcomes are approved.

Finally, the board proposes to remove the performance outcomes from the regulations. This change will allow the standing committee on training to update the standards as needed without having to go through the regulatory process. To ensure accessibility of these standards to regulated entities and public, the board will continue to publish them on its website.

Businesses and Entities Affected. There are approximately 3,300 dispatchers in Virginia.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant effect on employment is expected.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No significant direct costs or other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not have a direct adverse impact on small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services Standards and Training Section concurs with the economic impact analysis as reviewed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) reduce the number of members serving on the Curriculum Review Committee from 13 to nine; (ii) transfer the approval authority of the performance outcomes from the Criminal Justice Services Board to the board's Committee on Training; and (iii) remove the performance outcomes from the regulations.

6VAC20-60-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency or nonlaw-enforcement head of a communications center.

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training facility in compliance with academy certification standards and operated by the state or local unit(s) of government for the purpose of providing instruction of compulsory minimum training standards.

"Compulsory minimum training standards" means the performance outcomes and minimum hours approved by the Criminal Justice Services Board.

"Curriculum Review Committee" means the committee consisting of the following ~~13~~ nine individuals: ~~four~~ two members of the committee shall represent regional criminal justice academies, ~~four~~ two members of the committee shall represent independent criminal justice academies, one member shall represent the Department of State Police Training Academy, and four experienced communications personnel shall represent emergency communication functions. The Committee on Training shall appoint members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the Department of Criminal Justice Services.

"Dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the dispatching of law-enforcement personnel.

"Emergency medical dispatcher training" means training which meets or exceeds the training objectives as provided in Performance Outcome 1.6, which is set out in 6VAC20-60-100.

"Standard" means Performance Outcome, Training Objective, Criteria for Testing, and Lesson Plan Guide relating to compulsory minimum training for dispatchers and is found on the department's website.

"VCIN/NCIC training" means approved training as specified by the Virginia Department of State Police for dispatchers

accessing Virginia Crime Information Network/National Crime Information Center information.

6VAC20-60-20. Compulsory minimum training standards.

Pursuant to the provisions of § ~~9.1-102(8)~~ 9.1-102 (10) of the Code of Virginia, the board establishes the ~~following~~ categories of training as listed below as the compulsory minimum training standards for dispatchers:

~~1. The performance outcomes are specified in 6VAC20-60-100. Performance outcomes may not be changed except as noted in 6VAC20-60-25 through the Administrative Process Act.~~

~~2. Categories of training are listed below:~~

~~a.~~ 1. Category 1 - Communications.

~~b.~~ 2. Category 2 - Judgment.

~~c.~~ 3. Category 3 - Legal Issues.

~~d.~~ 4. Category 4 - Professionalism.

~~e.~~ 5. Category 5 - On-the-Job Training.

6VAC20-60-25. Approval authority.

A. The Criminal Justice Services Board shall be the approval authority for the training categories ~~and performance outcomes~~ of the compulsory minimum training standards. Amendments to training categories ~~and performance outcomes~~ shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. ~~Training~~ Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards ~~and performance outcomes~~ may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director, nonlaw-enforcement head of a communications center, or the Curriculum Review Committee.

Prior to approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of change of the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register.

6VAC20-60-100. ~~Performance outcomes for compulsory minimum training standards for dispatchers.~~ (Repealed.)

~~Category 1 - Communication~~

~~In conjunction with responding to calls for public safety services, the dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet these challenges successfully, the dispatcher must develop good communication skills in the performance of relevant duties. Expected performance outcomes in this category include the following:~~

~~1.1 Obtain information related to complaints and/or requests for service from the public, field units, and other agencies.~~

~~1.2 Perform multiple tasks related to receiving information and dispatching appropriate response units.~~

~~1.3 Apply standard communication techniques in receiving and transmitting information via radio and telephone.~~

~~1.4 Disseminate information to the public, field units, and other agencies using standard communication and dispatching techniques.~~

~~1.5 Apply standard communication techniques when handling specialized situations via radio, telephone, and in person.~~

~~1.6 Assist callers by providing initial emergency medical care information to victims of accidents, illness and/or crimes, if applicable.~~

~~1.7 Respond to a report of a disaster.~~

~~Category 2 - Judgment~~

~~In conjunction with responding to calls for public safety services, the dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet these challenges successfully, the dispatcher must develop good judgment in the performance of relevant duties. Expected performance outcomes in this category include the following:~~

~~2.1 Receive, prioritize, and handle multiple tasks related to emergency call taking and dispatching using judgment based on policies and procedures.~~

~~2.2 Receive and handle various types of nonemergency complaints and requests from the public or other agencies by using judgment based on policies and procedures.~~

~~Category 3 - Legal Issues~~

~~In conjunction with responding to calls for public safety services, the dispatcher must identify legal requirements based on the Constitution of the United States, the Code of~~

Virginia, and/or local ordinances where applicable. Expected performance outcomes in this category include the following:

3.1 Apply federal/state laws, local ordinances, and rules and regulations established for dispatch operations.

3.2 Perform the duties of a dispatcher with awareness of general liability applicable to this job.

3.3 Testify in court.

Category 4 - Professionalism

In conjunction with responding to calls for public safety services, the dispatcher must demonstrate professionalism in every aspect of performance of these services. The dispatcher faces challenges every day that require knowledge, judgment, skill, and ability from multiple and varied sources. To meet those challenges successfully, the dispatcher must attain and maintain professionalism in the performance of all duties. Expected performance outcomes include the following:

4.1 Respond to stressful situations professionally.

4.2 Respond to abusive callers or difficult people professionally.

Category 5 - On the Job Training

In conjunction with responding to calls for service, the dispatcher must identify requirements related to the employing law enforcement agency. These requirements may be general in nature, but serve to enhance the ability of both the dispatcher and the agency to provide needed public safety services. Expected performance outcomes in this category include the following:

5.1 Demonstrate ability to utilize agency equipment to handle 911 call taking and dispatching duties.

5.2 Quickly and accurately recording information into CAD and/or on cards.

5.3 Use of maps and street files to identify locations and proper codes.

5.4 Accurately type information received verbally.

5.5 Transmit the complaint to radio dispatch by computer/telephone, or personally dispatch appropriate response unit(s).

5.6 Use written information or computer aided dispatch to assign law enforcement, fire, and rescue units.

5.7 Monitor and update status of incidents and status of field units.

5.8 Update the field units regarding incident and status information.

5.9 Use written information or computer aided dispatch to redirect incidents to another dispatcher.

5.10 Monitor, respond, and dispatch by radio, computer transmission, or written information to and from field units.

5.11. Basic concepts and differences between basic and enhanced 9-1-1 telecommunications systems.

5.12 Conference phone lines or patch radio frequencies to enable communications.

5.13 Monitor transferred call until connection is established.

5.14 Receive and handle TTY calls.

5.15 Hold phone line to complete a telephone trace.

5.16 Use ANI/ALI to locate and identify caller, if applicable.*

5.17 Complete ANI/ALI forms to update entries, if applicable.*

5.18 Use call check system to replay "difficult" calls, if applicable.*

5.19 Use "emergency ring down" phones, if applicable.*

(*These criteria must be tested if the agency utilizes this telecommunications equipment.)

5.20 Conduct/monitor civil defense test.

5.21 Enter data into a record system.

5.22 Generate reports.

5.23 Restart the computer system, if applicable.

5.24 Transcribe and/or copy a tape recording.

5.25 Operate radio equipment.

5.26 Operate paging equipment.

5.27 Patch radio frequencies.

5.28 Perform radio frequency tests.

5.29 Dispatch by radio transmission.

5.30 Use of alternative communication methods if regular radio is down.

5.31 Using NCIC or other manuals for assistance.

5.32 Transmitting emergency bulletins by TTY (if applicable).

5.33 Query vehicle.

5.34 Query Computerized Criminal History (CCH).

5.35 Query stored vehicles.

5.36 Query driver's license.

5.37 Enter administrative license suspension (if applicable).

~~5.38 Query stolen articles.~~

~~5.39 Query gun.~~

~~5.40 Query wanted/missing persons.~~

~~5.41 Clearing entries (if applicable).~~

~~5.42 Enter/query protective orders.~~

~~5.43 Modify information in computer database (if applicable).~~

~~5.44 Hit confirmation process (to include placing locate).~~

~~5.45 Informal and formal messages.~~

~~NOTE: TRAINEE MUST COMPLETE VCIN/NCIC TRAINING PRIOR TO BEING TESTED ON THE JOB BY CRITERIA NUMBERS 5.31 THROUGH 5.45.~~

~~5.46 Answer, refer, and route calls/messages to proper departmental unit.~~

~~5.47 Prepare a general broadcast bulletin.~~

~~5.48 Complete data entry forms.~~

~~5.48.1 Wanted or missing person.~~

~~5.48.2 Stolen vehicle.~~

~~5.49 Prepare an activity log.~~

~~5.50 Prepare a summary report.~~

~~5.51 Prepare an intra-departmental memo.~~

~~5.52 Monitor alarm/security systems, if applicable.~~

~~5.53 Receive opening/closing calls, if applicable.~~

~~5.54 Maintain equipment within the communications center.~~

~~5.55 Troubleshoot equipment problems.~~

~~5.56 Document equipment problems.~~

~~5.57 Identify local ordinances affecting dispatch operations.~~

~~5.58 Use and maintain maps and cross street directories.~~

~~5.59 Demonstrate map reading skills to include street directions.~~

~~5.60 Use and maintain log shift rosters of assigned field units.~~

~~5.61 Use and maintain department files for warrants and/or other citations.~~

~~5.62 Use and maintain complaint history files.~~

~~5.63 Use and maintain specialized logs or data bases, e.g. medical incidents, problem addresses, restraining orders, etc.~~

~~5.64 Use and maintain towing agency rotation logs.~~

~~5.65 Use and maintain business directories.~~

~~5.66 Use and maintain a directory of services provided by other agencies.~~

~~5.67 Answer an anonymous witness line, e.g., Crime Stoppers.~~

~~5.68 Provide information, refer and/or transfer calls to appropriate departments or agencies as a general service to the public.~~

~~5.69 Provide requested information to authorized departments or agencies.~~

~~5.70 Maintain general resource material in the Communications Center.~~

~~5.71 Maintain order and cleanliness in the Communications Center.~~

VA.R. Doc. No. R09-1887; Filed December 15, 2010, 12:53 p.m.

◆ ◆

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-200. Payday Lending (amending 10VAC5-200-100).**

Statutory Authority: §§ 6.2-1815 and 12.1-13 of the Code of Virginia.

Effective Date: January 1, 2011.

Agency Contact: E.J. Face, Jr., Bureau of Financial Institutions Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

Summary:

Based on Chapter 477 of the 2010 Acts of Assembly, the State Corporation Commission is amending 10VAC5-200-100, which governs the conduct of other business in payday lending offices. The amendments to 10VAC5-200-100 A 2 prohibit the business of making loans under an open-end credit plan from a licensee's payday lending

office. However, amendments to 10VAC5-200-100 F retain certain conditions for open-end auto title lending because Chapter 477 permits lenders to continue collecting payments on their outstanding open-end auto title loans. Amendments to 10VAC5-200-100 B clarify the standards for approving the conduct of other business in payday lending offices, and the amendments to 10VAC5-200-100 G prescribe the uniform conditions that would be applicable to conduct a motor vehicle title lending business from a licensee's payday lending office. An additional disclosure requirement is added at the end of 10VAC5-200-100 J and K. Lastly, based on Chapter 794 of the 2010 Acts of Assembly, which recodified Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia, the amendments update Code of Virginia citations.

AT RICHMOND, DECEMBER 27, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00253

Ex Parte: In re: other business
in payday lending offices

ORDER ADOPTING A REGULATION

On November 2, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend 10 VAC 5-200-100 of the Virginia Administrative Code, which governs the conduct of other business in payday lending offices. The Order and proposed regulation were published in the Virginia Register of Regulations on November 22, 2010, posted on the Commission's website, and mailed to all licensed payday lenders and other interested parties. Licensed payday lenders and other interested parties were afforded the opportunity to file written comments or request a hearing on or before December 10, 2010. No comments or requests for a hearing were filed.

NOW THE COMMISSION, upon consideration of the proposed regulation, the record herein, and applicable law, concludes that the proposed regulation should be adopted with an effective date of January 1, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, 10 VAC 5-200-100 of the Virginia Administrative Code, as attached hereto, is adopted effective January 1, 2011.

(2) This Order and the attached regulation shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof, together with a copy of the attached regulation, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall send a copy of this Order, together with a copy of the attached regulation, to all licensed payday lenders and other interested parties designated by the Bureau.

10VAC5-200-100. Other business in payday lending offices.

A. This section governs the conduct of any business other than payday lending where a licensed payday lending business is conducted. As used in this section, the term "other business operator" refers to a licensed payday lender or third party, including an affiliate of the licensed payday lender, who conducts or wants to conduct other business from one or more payday lending offices.

1. Pursuant to § ~~6.1-463~~ 6.2-1820 of the Code of Virginia, a licensee shall not conduct the business of making payday loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a registered check cashing business or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. Notwithstanding any provision of this section or order entered by the commission prior to ~~February~~ October 1, 2010, the following other businesses shall not be conducted from any office, suite, room, or place of business where a licensed payday lending business is conducted:

a. Selling insurance or enrolling borrowers under group insurance policies.

b. Making loans under an open-end credit ~~or similar~~ plan as described in § ~~6.1-330.78~~ 6.2-312 of the Code of Virginia ~~unless the loans are secured by a security interest in a motor vehicle as this term is defined in § 46.2-100 of the Code of Virginia~~. However, if prior to October 1, 2010, a licensee received commission authority for an other business operator to conduct open-end credit business or open-end auto title lending business from the licensee's payday lending offices, the other business operator may continue collecting payments on any outstanding open-end loans (i) in accordance with the terms of its existing open-end credit agreements and (ii) subject to the conditions imposed by this section.

3. Pursuant to § ~~6.1-439~~ 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter ~~17~~ 21 (§ ~~6.1-432~~ 6.2-2100 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed payday lending business is conducted, unless the person is licensed under the Act and the loans are made in accordance with the Act.

B. ~~Upon the filing of a written application, provision of any information relating to the application as the Commissioner of Financial Institutions may require, and payment of the fee required by law,~~ No other business ~~may~~ shall be conducted in a location where a ~~licensed~~ licensee conducts a payday lending business ~~is conducted if the commission finds that (i)~~ unless the proposed other business is financial in nature~~; (ii) the proposed other business is in the public interest; (iii)~~ and the licensee obtains prior approval from the commission. Applications for approval shall be made in writing on a form provided by the Commissioner of Financial Institutions, and shall be accompanied by payment of the fee required by law and any information relating to the application that the Commissioner of Financial Institutions may require. In acting upon an application, the commission shall consider (i) whether the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; ~~and (iv)~~ (ii) whether the applicant has been operating its payday lending business in accordance with the Act and this chapter; and (iii) any other factors that the commission deems relevant. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. Nonfinancial other business may be conducted pursuant to any order of the commission entered on or before June 15, 2004. However, this subsection shall not be construed to authorize any person to begin engaging in such other business at payday lending locations where such other business was not conducted as of June 15, 2004.

D. Written evidence of commission approval of each other business conducted by an other business operator should be maintained at each location where such other business is conducted.

E. Except as otherwise provided in subsection ~~N~~ O of this section, all approved other businesses in payday lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's payday lending offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's payday lending business and in a different location within the licensee's payday lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

F. If a licensee ~~(i)~~ received commission authority for an other business operator to conduct open-end credit business or open-end auto title lending business from the licensee's payday lending offices, ~~or (ii) receives commission authority for an other business operator to conduct open-end auto title lending business from the licensee's payday lending offices,~~ the following additional conditions shall be applicable:

1. ~~Any loan made by the other business operator pursuant to an open-end credit agreement shall be secured by a security interest in a motor vehicle, as defined in § 46.2-100 of the Code of Virginia~~ The other business operator shall not (i) enter into any new open-end credit agreements or (ii) make any new loans pursuant to its existing open-end credit agreements.

2. The licensee shall not make a payday loan to a person if (i) the person has an outstanding open-end loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.

~~3. The other business operator shall not make an open-end loan to a person pursuant to an open-end credit agreement if (i) the person has an outstanding payday loan from the~~

~~licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.~~

~~4. The other business operator and the licensee shall not make an open-end loan and a payday loan contemporaneously or in response to a single request for a loan or credit.~~

~~5. The licensee and other business operator shall provide each applicant for a payday loan or open-end credit plan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.~~

~~6. Upon entering into an open-end credit plan secured by a borrower's motor vehicle, the other business operator shall record its security interest with the Department of Motor Vehicles and maintain adequate supporting documentation thereof in its loan file.~~

~~7. The other business operator shall not enter into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien. The other business operator shall maintain adequate supporting documentation in its loan file that a borrower's motor vehicle was not subject to a purchase money security interest or other outstanding lien at the time the borrower entered into the open-end credit plan.~~

G. If a licensee received or receives commission authority for an other business operator to conduct a motor vehicle title lending business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

2. The licensee shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.

3. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.

4. The other business operator and the licensee shall not make a motor vehicle title loan and a payday loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a payday loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

H. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's payday lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter ~~12~~ 19 (§ ~~6.1-370~~ 6.2-1900 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

~~H.~~ I. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation and electronic tax filing services, or (ii) facilitating third party tax preparation and electronic tax filing services, from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter ~~12~~ 19 (§ ~~6.1-370~~ 6.2-1900 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia.

~~I.~~ J. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a payday loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a payday loan contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter ~~12~~ 19 (§ ~~6.1-370~~ 6.2-1900 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a payday loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

~~J.~~ K. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a payday loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

2. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding payday loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.

3. The licensee and other business operator shall not make a payday loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a payday loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

~~K.~~ L. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's payday lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a payday loan from the licensee.

~~L.~~ M. The commission may impose any additional conditions upon the conduct of other business in payday lending offices that it deems necessary and in the public interest.

~~M.~~ N. Except as otherwise provided in subsection ~~N~~ O of this section, the conditions set forth or referred to in subsections E through ~~L~~ M of this section shall supersede the conditions set forth in the commission's approval orders entered prior to ~~February 1, 2010~~ January 1, 2011.

~~N.~~ O. If prior to ~~February 1, 2010~~ January 1, 2011, a licensee received commission authority for an other business operator to conduct a business not identified in subsections F through ~~K~~ L of this section, the conditions that were imposed by the commission at the time of the approval shall remain in full force and effect.

~~O.~~ P. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in ~~the~~ revocation of the authority to conduct other business~~, fines, license suspension, license revocation, or other appropriate~~ or any form of enforcement action specified in 10VAC5-200-120.

VA.R. Doc. No. R11-2641; Filed December 28, 2010, 12:59 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 18, 2011.

Agency Contact: Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680, or email patricia.taylor@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: This regulatory action is intended to clarify that the Health Insurance Premium Payment Program (HIPP) eligibility evaluation includes whether family healthcare coverage exists at the time that HIPP participation is evaluated, regardless of whether the eligibility evaluation is at the time of initial application or during a reevaluation. Upon implementation of this change, having existing family health care coverage will be considered in the HIPP eligibility determination. This change will require the amendment of regulations addressing HIPP eligibility, family healthcare coverage, and a clarification of the cost-effectiveness methodology. These changes are needed to ensure that HIPP payments made for the participants enrolled in the HIPP program are overall cost effective for the Commonwealth.

Substance: When the HIPP program was enacted in 1991 by the federal government it was envisioned as a means to reduce the cost of the Medicaid program by shifting the cost of medical expenses onto the employer health plan if one was available. The HIPP regulations require a cost-effectiveness determination of the employer health plan for enrollment. Cost effectiveness is defined as meaning that it is likely to cost the state less to pay the employee's share of the health insurance premium and any cost sharing items for the Medicaid eligible household members than it would cost otherwise under Medicaid. As a result of Medicaid eligibility rules, circumstances exist that allow a family member to be evaluated for Medicaid without evaluating family income. Eligibility is based on the individual's income only. These Medicaid enrollees whose eligibility is not determined based on family household income are likely to be covered under a family health insurance policy that includes family members not enrolled in Medicaid. Under the current changes being made in this regulation, a family that would have family health coverage for three or more members not enrolled in Medicaid would not be eligible for the HIPP program. The family would have the family coverage regardless if a family member was enrolled in Medicaid; therefore, the Commonwealth will no longer enroll Medicaid recipients in HIPP who would otherwise remain enrolled in the family health insurance if HIPP were not available.

High deductible health plans (HDHPs) are not cost effective for the HIPP program. In recent years as a result of increased insurance costs, many health care plans have adopted "high deductible" plans. An HDHP is defined in § 232(c)(2) of the Internal Revenue Code of 1986. The Department of Treasury updates the deductible amounts on an annual basis. These plans were nonexistent at the inception of the HIPP program; however, they have become more prevalent in recent years as health insurance premiums have increased. Medicaid would be paying all medical expenses until the deductible is met as well as the monthly premium. Because Medicaid eligibility only exists on a month-to-month basis, HDHPs are not cost effective for the HIPP program. Inclusion of this language provides clarity to the process that is currently followed today and is consistent with current federal regulations. The Child Health Insurance Program Reauthorization Action of 2009 included additional options for Premium Assistance Program under § 1906A of the Social Security Act and specifically excludes HDHP coverage for consideration.

Program participation requirements have been defined to ensure participants initially found eligible continue to meet the cost-effectiveness requirements. Additionally, program termination reasons have been included in the regulations. Current regulations provided reasons for terminating payments; however, nothing was defined regarding termination from the program. Including termination reasons provides clear authority to terminate participation in the program when participation requirements are not met. These regulations respond to the General Assembly's mandate clarifying several aspects of the HIPP cost effectiveness methodology, including promulgating several new definitions and addressing family healthcare issues with regard to HIPP.

Current regulations provided a clause for consideration for extraordinary circumstances of some recipients who are not eligible for HIPP. This language was removed because these eligibles are not cost effective for the HIPP program as they have limited eligibility, reside in a nursing home, or are Medicare eligible. Revisions were made to clarify that premium assistance subsidies begin the month after a completed application is received rather than at the time the cost effectiveness determination is made. This change reflects the current methodology used.

Language was revised regarding the submission of documentation required for premium assistance subsidy reimbursement. The HIPP program became an optional program effective July 23, 2009; participation in HIPP is no longer a condition for Medicaid eligibility. Language regarding the Department of Social Services receiving the required premium documentation has been removed from the

regulation as the information is to be submitted directly to DMAS.

Note: At the time of the emergency regulation promulgated as a precursor to this proposed regulation, 12VAC30-20-210 was also the subject of a fast-track regulatory action. Due to the difficulties of effecting changes in this section at the time another action is taking effect in the same regulatory subsection, DMAS elected to make the emergency changes both in 12VAC30-20-210 and in a new mirror image subsection, 12VAC30-20-211. The changes of the text in 12VAC30-20-210 made in the fast-track regulation are now final, and there is no further need to have two separate regulatory sections to address the current changes in 12VAC30-20-210. DMAS is therefore inserting all the emergency changes from 12VAC30-20-211 into 12VAC20-30-210 in this proposed regulation. This will leave 12VAC30-20-210 as the only regulatory subsection in this action going forward to the proposed and final stages.

Note: DMAS noted in the published emergency regulation background document that the agency intended to address several other issues in this proposed and later final regulations that follow the prior emergency action. Therefore, DMAS is modifying 12VAC30-20-210 to address several issues pertinent to the HIPP program, but which are not part of Item 306 AAA of Chapter 781 of the 2009 Appropriation Act. These issues include, but are not limited to, requirements regarding consent forms in the HIPP program, termination from the program, and program eligibility and participation requirements.

Issues: The primary disadvantage of this regulatory action for the public is that the families that were enrolled in HIPP with family coverage have been canceled and new applications with existing family health insurance are being denied. The families were accustomed to receiving reimbursement for the cost of the health insurance plan and these funds have now been discontinued. However, these participants incurred the cost of the insurance prior to applying to the HIPP program. The intent of the HIPP program is to provide for premium assistance for an employer group health insurance plan when the Medicaid recipient otherwise would not be enrolled in the group health plan. The families impacted by this regulatory change are already enrolled in their employer group health plan and most likely will continue to be enrolled in their employer group health plan for the family members who are not enrolled in Medicaid regardless of whether they participated in HIPP. Although through this program there has been a cost savings for individual policy holders and their families, the purpose of the program is a cost savings measure for the Commonwealth. Removing these families from the HIPP program does not mean that an enrollee's Medicaid eligibility is lost. Recipients who remain otherwise eligible for Medicaid continue their Medicaid coverage.

The primary advantage to the Commonwealth is cost savings by ensuring that the HIPP program provides for premium assistance as appropriate by not enrolling participants who would otherwise be covered under private insurance. The HIPP program is intended to be an overall cost savings program for the Commonwealth. Medicaid enrollment has changed over the years with the inclusion of additional covered groups in which family income is not evaluated only the individual's income is taken into consideration, while the HIPP program regulations have not been revised to reflect these eligibility changes. The HIPP program was intended to provide premium assistance for Medicaid eligibles enrollment in their employer group health when they would otherwise not be enrolled without being in the HIPP program. The HIPP program was not intended to provide premium assistance for families who would have family coverage for the household members who are not enrolled in Medicaid. Participants being denied HIPP participation under this regulatory change are dissatisfied with this change; however, in most instances they were in HIPP when only one family member was enrolled in Medicaid. These current regulatory changes do not permit HIPP enrollment with family employer policies where three or more insured family members are non-Medicaid recipients.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations make Medicaid recipients with a family health care coverage for three or more non-Medicaid family members ineligible for participation in Health Insurance Premium Payment program, update the regulations to conform to the practice of handling high deductible health plans, and clarify some of the current requirements.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section. A different design would likely yield greater benefits for at least one proposed change.

Estimated Economic Impact. The proposed regulations make Medicaid recipients with family health care coverage for three or more non-Medicaid family members ineligible for participation in the Health Insurance Premium Payment program (HIPP). Under HIPP, Medicaid pays for the employee's share of the health insurance premium and any other cost sharing fees if participation is found to be cost effective for Medicaid. Participation is considered cost effective if the premium assistance subsidy is likely to be less than the expected total expenditures that will be spent on that persons Medicaid coverage.

Prior to the proposed changes, a Medicaid recipient who is covered under a family health insurance program was eligible to receive a premium assistance subsidy for the entire cost of the plan. Chapter 781, Item 306 AAA of the 2009 Appropriation Act directed the Department of Medical

Assistance Services (DMAS) to promulgate regulations making existing family healthcare coverage a factor in the determination of cost effectiveness. In response, the proposed regulations make participation in HIPP ineligible for those with a family health insurance plan for three or more non-Medicaid family members. Emergency regulations have been in effect and DMAS has been denying premium assistance to those with family health coverage with three or more non-Medicaid family members since October 5, 2009.

The main economic impact of these regulations falls on the families whose HIPP eligibility will now be denied. These families will no longer receive the subsidy they used to receive. Prior to the emergency regulations, Medicaid was paying 100 percent of the employees share of the family health plan which may have covered Medicaid ineligible parents or other children. Under the proposed changes, individuals with a family health plan for three or more non-Medicaid family members are ineligible to participate in HIPP. In response to the proposed changes, these families may or may not keep the Medicaid eligible family member in the family health plan.

If the families keep the Medicaid eligible member in their family health plan, then the Commonwealth enjoys expected savings in terms of the reduced subsidy payments without an increase in total Medicaid expenditures. This scenario is more likely in cases where dropping Medicaid eligible family member from the family health plan does not reduce the plan premiums or the family plan coverage is superior for the Medicaid eligible family member.

However, if families drop the Medicaid eligible family member from the family health plan, the medical expenses of that Medicaid eligible family member would be paid 100% by Medicaid. In this scenario, the Commonwealth would realize savings by not paying the subsidy, but would incur additional costs by paying for all healthcare expenses. Families may be inclined to use this option if dropping the Medicaid eligible family member from the family health plan reduces the plan premiums or Medicaid coverage is better than the family plan coverage for the Medicaid eligible individual.

DMAS estimates that this change produces $1.3 million savings annually in premium assistance subsidy to approximately 362 recipients. One half of these funds represents savings to the Commonwealth and the remaining half represents savings to the federal government. However, the additional expenditures the Medicaid program may incur because families drop the Medicaid eligible family member from the family health plan is not known. If the additional expenditures to the Medicaid exceed $1.3 million, the proposed changes may result in net costs to Virginia Medicaid.

It is important to note that the net economic effect of the proposed regulations on Virginia Medicaid depend on whether families keep the Medicaid eligible member in the family insurance plan. The proposed regulations do not contain any incentives for the families to keep the Medicaid eligible member in the family insurance plan. If there are enough cases where the Medicaid eligible family member is dropped from the family health plan, the additional health expenditures Medicaid would have to pay may exceed $1.3 million. Thus, there is chance that the proposed regulations may actually produce net costs rather than net benefits.

If incentives are provided to families to keep the Medicaid eligible member in the family insurance plan, the proposed changes would be more likely to produce net savings. For example, a subsidy may be given for the incremental cost of covering the Medicaid eligible member in the family insurance plan. If it is impossible to determine this incremental cost of coverage, the subsidy may be determined by prorating the number of children on the plan or the number of individuals on the plan. In short, instead of counting on families to keep their Medicaid eligible member in the family insurance plan, the proposed regulations could be designed to actually provide them with incentives to do so to ensure that the proposed changes actually provide net savings to Virginia Medicaid. It also appears that providing a subsidy for the Medicaid eligible members share of the family insurance premium would be more consistent with the intent of the HIPP program.

The proposed changes also update the regulations to conform to the practice of handling high deductible health plans. According to DMAS, since 2008 high deductible health plans have been considered ineligible to participate in HIPP. The proposed changes will reflect this change in practice. Although no immediate economic impact is expected upon promulgation of this particular change, DMAS estimates that from June 2008 through March 2010, 66 cases have been cancelled for high deductible plans representing $277,719 savings in premium assistance subsidy.

All of the remaining proposed changes are clarifications of the current requirements. None of these clarifications are expected to have any significant economic impact other than improving the clarity of the regulations and preventing potentially costly misunderstandings.

Businesses and Entities Affected. The proposed family health care related changes are estimated to affect 362 participants and the changes related to high deductible health plans are estimated to affect 66 participants in the HIPP program.

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

Projected Impact on Employment. The proposed changes are not expected to have a significant direct impact on employment.

Effects on the Use and Value of Private Property. The proposed changes are not expected to have a significant direct impact on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed regulations do not introduce any direct costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not introduce an adverse impact on small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning the HIPP program, 12VAC30-20-210. The department concurs with the greater part of the analysis, but wishes to clarify one major point from the agency's standpoint.

The HIPP regulations require a cost-effectiveness determination of the employer health plan for enrollment. Cost effectiveness here means that it costs the state less to pay the employee's share of the family health insurance premium and cost sharing than pay the full medical costs for the enrollee. As a result of Medicaid eligibility rules, there are circumstances that allow a Medicaid applicant to be Medicaid eligible without regard for the income of the applicant's family. Such enrollees are likely to be covered under a family health insurance policy that includes family members who are not enrolled in Medicaid. Under the current changes being made in this regulation, a family that has family health coverage for three or more non-Medicaid family members would not be eligible for the HIPP program. Most families in these circumstances would have the family health coverage even if Medicaid were not paying their family premiums. Because the HIPP program is intended for families that cannot afford health insurance premiums, DMAS determined that it will no longer enroll Medicaid recipients in HIPP who would otherwise retain family coverage. These enrollees do not lose their Medicaid coverage. This regulatory change means, however, that DMAS will no longer make premium payments for both Medicaid and non-Medicaid family members.

DPB suggests an alternative approach in which the agency makes prorated premium payments based upon the number of non-Medicaid members in the family. This approach, however, creates an untenable administrative burden on the agency that would likely outweigh its fiscal benefits. In response to DPB's concerns, DMAS intends to revise the final HIPP regulations to create two exceptions for families with financial need who would be ineligible for the HIPP under the new rule. The first exception is for families who have a family health plan with three or family members not enrolled in Medicaid but have family income below the family income limit for eligibility. Some families have children who have aged out of Medicaid eligibility but are still covered under the family's insurance. With Health Care Reform, children can remain enrolled in a parent's health plan until age 26, so this change should address this issue in part.

The second exception is for families where at least one child is enrolled in Medicaid and the family would meet the income eligibility criteria for the Family Access to Medicaid Insurance Security (FAMIS) program, but because they have health insurance they are not eligible for FAMIS. In both types of these cases described here, where the family income is below the Medicaid or FAMIS income limits, the families will be considered for HIPP participation.

In addition, effective October 1, 2010, DMAS expanded the HIPP program by adopting the optional premium assistance program available under § 1906(A) of the Social Security Act. While this program is targeted toward Medicaid eligible children under the age of 19, it does not exclude existing family health plans. Therefore, some cases denied or canceled under the current HIPP regulations may meet the criteria under the 1906(A) premium assistance program. 1906A utilizes a more simplistic cost effective evaluation that only requires that the employer contribute at least 40% of the health insurance cost. DMAS intends to contact policy holders canceled from HIPP or denied participation under the

current regulations to inform them of the expanded program available under 1906(A) for which they may be eligible.

DMAS acknowledges that a family may elect to drop a Medicaid-enrolled family member from their health plan if they are excluded from the HIPP program. However, from a review of cases affected by the new policy DMAS has concluded that families continue their private insurance regardless of whether HIPP premium assistance is available. If, in light of this regulatory change, a family drops the Medicaid eligible individual from the family plan, their estimated private premium costs will not decrease. It is far more likely that such families will keep the Medicaid eligible on their private health plan where it makes no difference in the amount of their premium.

DMAS continues to monitor the impact of the cases that have been canceled or denied premium assistance to determine those situations in which the Medicaid eligible has been removed from the family health plan. The agency will analyze these findings to determine if further modification to the regulations is warranted.

Summary:

Item 306 AAA of Chapter 781 of the 2009 Appropriation Act directed the Department of Medical Assistance Services to amend the State Plan for Medical Assistance to clarify that existing family healthcare coverage is a factor in the determination of eligibility under the Health Insurance Premium Payment program. More specifically, cases resulting in a determination that participation is denied based upon the existence of family health care coverage will be denied premium assistance.

The proposed amendments make Medicaid recipients with a family health care coverage for three or more non-Medicaid family members ineligible for participation in the Health Insurance Premium Payment program, update the regulations to conform to the practice of handling high deductible health plans, and clarify some of the current requirements.

12VAC30-20-210. State method on cost effectiveness of employer-based group health plans.

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

"Average monthly Medicaid cost" means average monthly medical expenditures based upon age, gender, Medicaid enrollment covered group, and geographic region of the state.

"Average monthly wraparound cost" means the average monthly aggregate costs for services not covered by private health insurance but covered under the State Plan for Medical Assistance, also includes copayments, coinsurance, and deductibles.

"Case" means all family members who are eligible for coverage under the group health plan and who are eligible for Medicaid.

"Code" means the Code of Virginia.

"Cost effective" and "cost effectiveness" mean the reduction in Title XIX expenditures, which are likely to be greater than the additional expenditures for premiums and cost-sharing items required under § 1906 of the Social Security Act (the Act), with respect to such enrollment.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSS" means the Department of Social Services consistent with Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 of the Code of Virginia.

"Family member" means individuals who are related by blood, marriage, ~~or~~ adoption, or legal custody.

"Family health plan" and "family care coverage" means a group health plan that covers three or more individuals. Family health plans that cover three or more non-Medicaid eligible individuals are not eligible for the HIPP premium assistance subsidy.

"Group health plan" means a plan which meets § 5000(b)(1) of the Internal Revenue Code of 1986, and includes continuation coverage pursuant to Title XXII of the Public Health Service Act, § 4980B of the Internal Revenue Code of 1986, or Title VI of the Employee Retirement Income Security Act of 1974. Section 5000(b)(1) of the Internal Revenue Code provides that a group health plan is a plan, including a self-insured plan, of, or contributed to by, an employer (including a self-insured person) or employee association to provide health care (directly or otherwise) to the employees, former employees, or the families of such employees or former employees, or the employer.

"High deductible health plan" means a plan as defined in § 223(c)(2) of Internal Revenue Code of 1986, without regard to whether the plan is purchased in conjunction with a health savings account (as defined under § 223(d) of such Code).

"HIPP" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906 of the Act.

"Premium" means ~~that portion of the cost for the group health plan which is the responsibility of the person carrying the group health plan policy~~ the fixed cost of participation in the group health plan; such cost may be shared by the employer and employee or paid in full by either party.

"Premium assistance subsidy" means the portion that DMAS will pay of the ~~family's~~ employee's cost of participating in an employer's health plan to cover the Medicaid eligible

members under the employer-sponsored plan if DMAS determines it is cost effective to do so.

"Recipient" means a person who is eligible for Medicaid as determined by the Department of Social Services.

B. Program purpose. The purpose of the HIPP Program shall be ~~to~~:

1. ~~Enroll~~ To enroll recipients who have an available group health plan that is likely to be cost effective;

2. ~~Provide~~ To provide premium assistance subsidy for payment of the employee share of the premiums and other cost-sharing obligations for items and services otherwise covered under the State Plan for Medical Assistance (the Plan); and

3. ~~Treat~~ To treat coverage under such employer group health plan as a third party liability consistent with § 1906 of the Social Security Act.

C. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for HIPP program eligibility; if HIPP program eligibility is established, DMAS shall then evaluate the group health plan for cost effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost-effectiveness evaluation.

D. Recipient eligibility. DMAS shall obtain specific information on all group health plans available to the recipients in the case including, but not limited to, the effective date of coverage, the services covered by the plan, the deductibles and copayments required by the plan, the exclusions to the plan, and the amount of the premium. Coverage that is not comprehensive shall be denied premium assistance. Cases that result in a determination that the applicant is not eligible for the HIPP program shall be denied premium assistance and shall not undergo further review as described in subsection E of this section. All family members who are eligible for coverage under the group health plan and who are eligible for Medicaid shall be eligible for consideration for HIPP, except ~~those~~ any one or more of the factors identified in subdivisions 1 through 7 of this subsection. ~~below. The agency will consider recipients in this subsection for consideration for HIPP when extraordinary circumstances indicate the group health plan might be cost effective.~~

1. The recipient is Medicaid eligible due to "spend-down"~~;~~ .

2. The recipient is currently enrolled in the employer sponsored health plan and is only retroactively eligible for Medicaid~~;~~ .

3. The recipient is in a nursing home or has a deduction from patient pay responsibility to cover the insurance premium~~; or~~ .

4. The recipient is eligible for Medicare ~~Part B, but is not enrolled in Part B~~ .

5. The recipient's family has, or would have, family healthcare coverage for three or more members who are not Medicaid eligible.

6. Medicare eligibility. Medicaid recipients eligible for, or enrolled in, Medicare Part A and/or Part B who are also covered by an employer group health plan are not eligible for HIPP.

7. High Deductible Health Plans (HDHPs) are defined in § 223(c)(2) of the Internal Revenue Code of 1986. HDHPs are not cost effective for the HIPP program and shall be denied premium assistance and shall not undergo further review as described in subsection E of this section. The annual deductible amount for a HDHP is defined by the Department of Treasury and is updated annually.

~~D. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for eligibility and cost-effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost-effectiveness evaluation.~~

E. Cost-effectiveness evaluation. If the Medicaid eligible(s) is enrolled in the health plan and is not excluded from HIPP program participation under the criteria described in subsection D of this section, DMAS shall conduct the premium cost-effectiveness evaluation based upon the following methodology:

1. Recipient information. DMAS shall obtain demographic information on each recipient in each case including, but not limited to, Medicaid enrollment covered group, age, gender, and geographic region of residence in the state.

2. DMAS shall compute the average monthly Medicaid cost for each Medicaid enrollee on the group health insurance plan and compare the total cost to the employee's responsibility for the health insurance cost.

3. Wraparound cost. DMAS shall total the average monthly wraparound cost for each Medicaid enrollee on the HIPP case and subtract the amount from the average monthly Medicaid cost for the cost-effectiveness evaluation.

4. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost. DMAS shall subtract the administrative cost from the average monthly Medicaid cost for the cost-effectiveness evaluation.

5. Determination of premium cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if subdivision a is less than subdivision b below:

a. The employee's responsibility for the group health plan premium.

b. The total of the average monthly Medicaid costs less the wraparound costs for each Medicaid enrollee covered by the group health plan and the administrative cost.

6. DMAS may reimburse up to the amount determined in subdivision 5 b of this subsection, if subdivision 5 a of this subsection is not less than subdivision 5 b of this subsection.

F. Payments. When DMAS determines that a group health plan is likely to be cost effective based on the DMAS established methodology, DMAS shall provide for the payment of ~~premiums~~ premium assistance subsidy and other cost-sharing obligations for items and services otherwise covered under the Plan, except for the nominal cost sharing amounts permitted under § 1916.

1. Effective date of ~~premiums~~ premium assistance subsidy. Payment of ~~premiums~~ premium assistance subsidy shall become effective on the first day of the month following the month in which DMAS ~~makes the cost-effectiveness determination~~ receives a complete HIPP application or the first day of the month in which the group health plan coverage becomes effective, whichever is later. Payments shall be made to either the employer, the insurance company or to the individual who is carrying the group health plan coverage.

~~2. Termination date of premiums. Payment of premiums shall end:~~

~~a. On the last day of the month in which eligibility for Medicaid ends;~~

~~b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan; or~~

~~c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has redetermined that the group health plan is no longer cost effective, whichever comes later.~~

~~3. Non-Medicaid eligible family members. Payment of premiums for non-Medicaid eligible family members may be made when their enrollment in the group health plan is required in order for the recipient to obtain the group health plan coverage. Such payments shall be treated as payments for Medicaid benefits for the recipient.~~ 2. No payments for deductibles, coinsurances, and other cost-sharing obligations for non-Medicaid eligible family members shall be made by DMAS.

~~4. Evidence of enrollment required. A person to whom DMAS is paying the group health plan premium shall, as a condition of receiving such payment, provide to DSS or DMAS, upon request, written evidence of the payment of the group health plan premium for the group health plan which DMAS determined to be cost effective~~ 3. Documentation required for premium assistance subsidy reimbursement. A person to whom DMAS is paying an employer group health plan premium assistance subsidy shall, as a condition of receiving such payment, provide documentation as prescribed by DMAS of the payment of the employer group health plan premium for the group health plan that DMAS determined to be cost effective.

~~F. Guidelines for determining cost effectiveness.~~

~~1. Enrollment limitations. DMAS shall take into account that a recipient may only be eligible to enroll in the group health plan at limited times and only if other non-Medicaid eligible family members are also enrolled in the plan simultaneously.~~

~~2. Plans provided at no cost. Group health plans for which there is no premium to the person carrying the policy shall be considered to be cost effective.~~

~~3. Non-Medicaid eligible family members. When non-Medicaid eligible family members must enroll in a group health plan in order for the recipient to be enrolled, DMAS shall consider only the premiums of non-Medicaid eligible family members in determining the cost effectiveness of the group health plan.~~

~~4. DMAS shall make the cost-effectiveness determination based on the following methodology:~~

~~a. Recipient and group health plan information. DMAS shall obtain demographic information on each recipient in the case, including, but not limited to: federal program designation, age, sex, geographic location. DMAS [or DSS] shall obtain specific information on all group health plans available to the recipients in the case, including, but not limited to, the effective date of coverage, the services covered by the plan, the exclusions to the plan, and the amount of the premium.~~

~~b. Average estimated Medicaid expenditures. DMAS shall estimate the average Medicaid expenditures for a 12-month period for each recipient in the case based on the expenditures for persons similar to the recipient in demographic and eligibility characteristics. Expenditures shall be adjusted accordingly for inflation and scheduled provider reimbursement rate increases. Average estimated Medicaid expenditures shall be updated periodically.~~

~~c. Medicaid expenditures covered by the group health plan. DMAS shall compute the percentage of expenditures for group health plan services against the expenditures for the same Medicaid services and then adjust the average estimated Medicaid expenditures by this percentage for each recipient in the case. These adjusted expenditures shall be added to obtain a total for the case.~~

~~d. Group health plan allowance. DMAS shall multiply an allowance factor by the Medicaid expenditures covered by the group health plan to produce the estimated group~~

~~health plan allowance. The allowance factor shall be based on a state specific factor, a national factor or a group health plan specific factor.~~

~~e. Covered expense amount. DMAS shall multiply an average group health plan payment rate by the group health plan allowance to produce an estimated covered expense amount. The average group health plan payment rate shall be based on a state specific rate, national rate or group health plan specific rate.~~

~~f. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost per recipient. DMAS shall add to the administrative cost any pre-enrollment costs required in order for the recipient to enroll in the group health plan.~~

~~G. Determination of cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection:~~

~~1. The difference between the group health plan allowance and the covered expense amount, added to the premium and the administrative cost; and~~

~~2. The Medicaid expenditures covered by the group health plan.~~

~~If subdivision 1 of this subsection is not less than subdivision 2 of this subsection, DMAS shall adjust the amount in subdivision 2 of this subsection using past medical utilization data on the recipient, provided by the Medicaid claims system or by the recipient, to account for any higher than average expected Medicaid expenditures. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection once this adjustment has been made.~~

~~3. Redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, not to exceed every 12 months. DMAS shall also redetermine the cost effectiveness of the group health plan whenever there is a change to the recipient and group health plan information that was used in determining the cost effectiveness of the group health plan. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the group health plan premiums continue to be cost effective.~~

~~4. Multiple group health plans. When a recipient is eligible for more than one group health plan, DMAS shall perform the cost effectiveness determination on the group health plan in which the recipient is enrolled. If the recipient is not enrolled in a group health plan, DMAS shall perform the cost effectiveness determination on each group health plan available to the recipient.~~

G. Program participation requirements. Participants must comply with program requirements as prescribed by DMAS for continued enrollment in HIPP. Failure to comply shall result in termination from the program.

1. Submission of documentation of premium expense within specified time frame in accordance with DMAS established policy.

2. Changes that impact the cost-effectiveness evaluation must be reported within 10 days.

3. Completion of annual redetermination.

4. Completion of consent forms. Participants may be required to complete a consent form to release information necessary for HIPP participation and program requirements as required by DMAS.

H. HIPP redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, at least every 12 months. DMAS shall also redetermine cost effectiveness when changes occur with the recipient average Medicaid cost and/or with the group health plan information that was used in determining the cost effectiveness. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the premium assistance subsidy of the group health plan continues to be cost effective.

I. Program termination. Participation in the HIPP program shall be terminated for failure to comply with or meet program requirements. Termination will be effective the last day of the month in which advance notice has been given (consistent with federal regulations).

1. Participation shall be terminated for:

a. Failure to submit documentation of payment of premiums (noncompliance);

b. Failure to provide information required for reevaluation of cost effectiveness (noncompliance);

c. Loss of Medicaid eligibility for all household members;

d. Medicaid household member no longer covered by employer health plan; or

e. Employer group health plan is determined to be not cost effective.

2. Participants terminated for noncompliance under subdivisions 1 a and 1 b of this subsection, shall be barred from reapplying to the HIPP program for three months from the date of cancellation.

3. Termination date of premiums. Payment of premium assistance subsidy shall end on whichever of the following occurs the earliest:

a. On the last day of the month in which eligibility for Medicaid ends;

b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan;

c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has determined that the group health plan is no longer cost effective; or

d. The last day of the month in which adequate notice has been given (consistent with federal requirements) that HIPP participation requirements have not been met.

~~H.~~ J. Third party liability. When recipients are enrolled in group health plans, these plans shall become the first sources of health care benefits, up to the limits of such plans, prior to the availability of Title XIX benefits.

~~I.~~ K. Appeal rights. Recipients shall be given the opportunity to appeal adverse agency decisions consistent with agency regulations for client appeals (12VAC30-110).

~~J.~~ L. Provider requirements. Providers shall be required to accept the greater of the group health plan's reimbursement rate or the Medicaid rate as payment in full and shall be prohibited from charging the recipient or Medicaid amounts that would result in aggregate payments greater than the Medicaid rate as required by 42 CFR 447.20.

NOTICE: The following forms used in administering the regulation have been filed by the Department of Medical Assistance Services. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the names of the forms. The forms are also available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC30-20)

Health Insurance Premium Payment (HIPP)/HIPP For Kids Program Application and Instructions (rev. 9/10).

Employer Insurance Verification (rev. 10/10).

Re-evaluation Employer Insurance Verification (rev. 10/10).

VA.R. Doc. No. R10-2021; Filed December 28, 2010, 10:40 a.m.

Proposed Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-131).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-96).

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-380).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 18, 2011.

Agency Contact: Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Specifically, Item 306 TTT of the 2009 Appropriation Act states that the Department of Medical Assistance Services, in consultation with the Department of Behavioral Health and Developmental Services (DBHDS), shall amend the State Plan for Medical Assistance Services in order to comply with the payor of last resort requirements of Part C of the Individuals with Disabilities Education Act (IDEA) of 2004.

Purpose: The proposed regulatory action creates a new model for Medicaid coverage of Early Intervention (EI) services for children less than three years of age who are eligible for services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) (20 USC § 1431 et seq.). This new methodology fulfills the General Assembly mandate by establishing a framework for ensuring that providers of EI services for Medicaid children through the Part C program bill Medicaid first before using federal or state-only Part C program funds to comply with the federal Part C payor of last resort requirement set out in 34 CFR 303.527. In order to ensure compliance with federal Part C requirements DMAS, through these proposed regulations, is

establishing a newly recognized provider type and specialty to provide services specifically oriented to the requirements of individuals eligible for Part C services. This specialized provider group will support the service delivery system the state adopted to provide EI services -- the Virginia Infant and Toddler Connection of Virginia (I&TC). The I&TC is administered through local lead agencies. All local efforts are overseen by the Department of Behavioral Health and Developmental Services (DBHDS), which receives Virginia's Part C allotment and administers the overall program. DBHDS contracts with local lead agencies to facilitate implementation of EI services statewide. The majority of local lead agencies are under the auspices of community services boards, along with several universities, public health districts, local governments, and local education agencies.

These new regulations establish a broader range of specialized Part C providers to meet the individual child's needs and assure that providers have the specific expertise to effectively address developmental problems in young children as provided for in Part C. Routing Medicaid-covered individuals through Medicaid Part C providers ensures that the Commonwealth will draw down the maximum available federal Medicaid match for those Part C services currently paid with state-only funds.

The proposed regulatory action is one component of an administrative initiative to revise the system of financing for Part C EI services in Virginia and ensure compliance with the payor of last resort requirements of Part C of IDEA. DBHDS is proposing new regulations for certification of EI providers in tandem with this initiative.

Substance: The sections of the State Plan-related Virginia Administrative Code chapters that are affected by this action are Amount, Duration and Scope of Medical and Remedial Services (12VAC30-50); Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80), and Waivered Services (12VAC30-120).

Most of the services needed by the children enrolled in I&TC are habilitative in nature. In other words, they are designed to help a child with an identified developmental concern to achieve a given function for the first time, such as walking or talking. Traditional rehabilitation therapists are not always the most appropriate providers of EI services. Some children are better served by other practitioners with specialized knowledge and experience regarding child development and EI methods, together with consultation from licensed rehabilitation therapists as needed.

Currently, local IT&C systems have two choices for serving preschool children enrolled in Medicaid: (i) provide all EI services to Medicaid enrollees with the regular licensed rehabilitation therapists, who may lack the specialized knowledge and experience for EI, or (ii) provide some EI services without Medicaid reimbursement, but pay for them with limited federal Part C, state, or local funds. EI type services may currently be obtained by a variety of agencies participating with Medicaid; however, there is no uniform reimbursement for Part C services. This disparity has made it difficult to support a uniform fee schedule for Part C services across all payment sources. Resolving this disparity is a necessary step to bring Virginia into compliance with the payor of last resort requirement.

These proposed regulations define a new approach to payment for EI services under Medicaid that supports the IT&C model. The proposed EI services would be provided in the child's natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in EI principles and practices. This regulatory action requires Part C practitioners to be certified by DBHDS as a condition of participation with DMAS as designated EI service providers in the Medicaid program.

Medicaid payment for defined EI services would provide a framework for ensuring that providers of EI services through the IT&C model bill Medicaid first, if appropriate, before using Part C program funds to comply with the payor of last resort requirement contained in Part C of IDEA. Certified individuals and agencies who currently participate with the DMAS shall obtain Part C designation from DMAS and bill for services as EI providers rather than as a rehabilitation agency provider or another designation. New providers shall enroll to participate with DMAS with a Part C specialty designation in order to bill for EI services. DMAS and DBHDS shall be able to identify services paid for by Medicaid that are provided under the purview of the IT&C model. EI services shall be reimbursed on a fee-for-service basis for non-MCO providers. All private and governmental fee-for-service providers shall be paid according to the same methodology, with separate fees for certified EI providers who are licensed as physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech pathologists, or registered nurses to ensure access to EI services.

It is important to note that there is a distinct difference between EI services, which are medically appropriate only for children under the age of three years, and similar habilitative services available to children aged three years up to age 21. DMAS is making this distinction clear in 12VAC30-50-131 (Definitions), with the following language:

> EI services are available to qualified individuals through Early and Periodic Screening, Diagnosis and Treatment (EPSDT). EI services are distinguished from similar rehabilitative services available through EPSDT to individuals aged three and older in that EI services are specifically directed towards children from birth to age

three. EI services are not medically indicated for individuals aged three and above.

Issues: The primary advantage to private citizens of implementing the proposed provisions is that payment for services from a broader range of trained early intervention providers will be available to disabled children covered by Medicaid.

The primary advantage to the Commonwealth is the ability to draw down additional federal Medicaid funds to support Part C early intervention services.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations make permanent the Medicaid coverage for early intervention services for children less than three years of age and who are eligible for these services. These changes have been in effect under emergency regulations since October 29, 2009.

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

Estimated Economic Impact. The proposed regulations provide Medicaid coverage for early intervention services for children less than three years of age and who are eligible for these services. Part C of the Individuals with Disabilities Education Act of 2004 as set out in 34 CFR 303.527 established payor of last resort provisions. Payor of last resort provisions mandated that Part C program funds may not be used for services that would otherwise have been paid from other sources. Also, Item 306 TTT of the 2009 Appropriations Act directed the Department of Medical Assistance Services (DMAS) to comply with these payor of last resort provisions and implement the changes under emergency regulations. Emergency regulations became effective on October 29, 2009.

The delivery system to provide early intervention services in Virginia is the Infant and Toddler Connection of Virginia (I&TC). The I&TC is administered through local lead agencies. All local efforts are overseen by the Department of Behavior Health and Developmental Services (DBHDS), which receives Virginia's Part C allotment and administers the overall program. DBHDS contracts with local agencies to facilitate implementation of early intervention services statewide. The majority of local agencies are under the auspices of community services boards, along with several universities, public health districts, local governments, and local education agencies.

Prior to the emergency regulations, local IT&C systems had two choices for serving preschool children enrolled in Medicaid: 1) provide all early intervention services to Medicaid enrollees with the regular licensed rehabilitation therapists, who may lack the specialized knowledge and experience for early intervention, or 2) provide some early intervention services without Medicaid reimbursement, but pay for them with limited federal Part C, state, or local funds.

The proposed regulations establish that providers of early intervention services for Medicaid children through the Part C program bill Medicaid first before using federal, local, or state-only Part C program funds.

The proposed regulations also create a new model for service delivery. According to DMAS, most of the services needed by the children enrolled are habilitative in nature. In other words, they are designed to help a child with an identified developmental concern to achieve a given function for the first time, such as walking or talking. Traditional rehabilitation therapists are not always the most appropriate providers of early intervention services. Some children are better served by other practitioners with specialized knowledge and experience regarding child development and early intervention methods, together with consultation from licensed rehabilitation therapists as needed.

The proposed early intervention services would be provided in the childs natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in early intervention principles and practices. This regulatory action requires Part C practitioners to be certified by DBHDS as a condition of participation with DMAS as designated early intervention service providers in the Medicaid program. Under the new model, providers would obtain Part C designation from DMAS and bill for services as early intervention providers rather than as rehabilitation providers or other designations.

The main economic effect of the proposed regulations is the additional influx of federal funds coming into the Commonwealth. The proposed changes enable the Commonwealth to draw down the maximum available federal Medicaid match for Part C services currently being paid with federal, local, or state only program funds. DMAS estimates that approximately $4.6 million in total funds will be needed to pay for early intervention services to Medicaid eligible children provided by qualified practitioners who previously were not eligible to enroll as Medicaid provider. Of this amount, one half, or $2.3 million, is paid by the state and the remaining half is paid by the federal matching funds. DMAS will obtain the $2.3 million state portion by transfer from DBHDS. Because these services are currently being paid without federal matching funds, the proposed Medicaid coverage of early intervention services will result in a net

increase of approximately $2.3 million to the Commonwealth.

Another major benefit of the proposed regulations is the expected improvement in service delivery and outcomes. DMAS believes that children may be better served by practitioners with specialized knowledge and experience regarding child development and early intervention methods, together with consultation from licensed rehabilitation therapists as needed.

The proposed regulations are also expected to create additional administrative costs in terms of staff time needed to process claims, ongoing training and technical support, and programmatic changes to the computerized claims processing system.

It is worth noting that these regulations have already been in effect and their economic effects have already been materialized. Thus, no additional economic effects are expected upon promulgation of these proposed changes.

Businesses and Entities Affected. As of January 2010, 2942 infants and toddlers were eligible to receive early intervention services from Medicaid and there were approximately 100 providers enrolled.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations are not expected to create a direct significant effect on employment. However, the demand for labor by the new types of early intervention services providers may increase. Also, if the additional federal matching funds expected to come to Virginia are spent in other areas, we may see an indirect increase in demand for labor in those areas.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. Approximately half of the 100 early intervention services providers enrolled in Medicaid are believed to be small businesses. The proposed regulations may increase revenues of new types of early intervention services providers. However, no direct costs are imposed on them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No direct adverse effects on small businesses are expected.

Real Estate Development Costs. No real estate development costs are expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Coverage and Reimbursement of Early Intervention (EI) Services under Part C of IDEA (12VAC30-50-131, 12VAC30-80-20, 12VAC30-80-96, 12VAC30-80-200, 12VAC30-120-360, and 12VAC30-120-380).

Summary:

These regulations define a new approach to payment for Early Intervention services under Medicaid that supports the Infant and Toddler Connection (IT&C) model. The proposed Early Intervention services would be provided in the child's natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in Early Intervention principles and practices. This regulatory action requires Part C practitioners to be certified by Department of Behavioral Health and Developmental Services as a condition of participation with Department of Medical Assistance Services as designated Early Intervention service providers in the Medicaid program.

12VAC30-50-131. Early Intervention services.

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

"DBHDS" means the Department of Behavioral Health and Developmental Services, the lead state agency for Early

Intervention services appointed by the Governor in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Early Intervention services" or "EI" means services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.), as amended, and in accordance with 42 CFR 440.130(d), which are designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development, and are provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. EI services are available to qualified individuals through Early and Periodic Screening, Diagnosis, and Treatment (EPSDT). EI services are distinguished from similar rehabilitative services available through EPSDT to individuals aged three and older in that EI services are specifically directed towards children from birth to age three. EI services are not medically indicated for individuals aged three and above.

"Individualized family service plan" or "IFSP" means a comprehensive and regularly updated statement specific to the child being treated containing, but not necessarily limited to, treatment or training needs, measurable outcomes expected to be achieved, services to be provided with the recommended frequency to achieve the outcomes, and estimated timetable for achieving the outcomes. The IFSP is developed by a multidisciplinary team that includes the family, under the auspices of the local lead agency.

"Local lead agency" means an agency under contract with the Department of Behavioral Health and Developmental Services to facilitate implementation of a local Early Intervention system as described in Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

"Primary care provider" means a practitioner who provides preventive and primary health care and is responsible for providing routine Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening and referral and coordination of other medical services needed by the child.

B. Coverage for Early Intervention services.

1. Early Intervention services shall be reimbursed for individuals who meet criteria for Early Intervention services established by DBHDS in accordance with Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

2. Early Intervention services shall be recommended by the child's primary care provider or other qualified EPSDT screening provider as necessary to correct or ameliorate a physical or mental condition.

3. Early Intervention services shall be provided in settings that are natural or normal for an infant or toddler without a disability, such as the home, unless there is justification for an atypical location.

4. Except for the initial and periodic assessments, Early Intervention services shall be described in an IFSP developed by the local lead agency and designed to prevent or ameliorate developmental delay within the context of the Early Intervention services system defined by Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

5. Medical necessity for Early Intervention services shall be defined by the IFSP. The IFSP shall describe service needs in terms of amount, duration, and scope. The IFSP shall be approved by the child's primary care provider.

6. Covered Early Intervention services include the following functions provided with the infant or toddler and the child's parent or other authorized caregiver by a certified Early Intervention professional:

a. Assessment, including consultation with the child's family and other service providers, to evaluate:

(1) The child's level of functioning in the following developmental areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development;

(2) The family's capacity to meet the developmental needs of the child; and

(3) Services needed to correct or ameliorate developmental conditions during the infant and toddler years.

b. Participation in a multidisciplinary team review of assessments to develop integrated, measurable outcomes for the IFSP.

c. The planning and design of activities, environments, and experiences to promote the normal development of an infant or toddler with a disability, consistent with the outcomes in the IFSP.

7. Covered Early Intervention services include the following functions when included in the IFSP and provided with an infant or toddler with a disability and the child's parent or other authorized caregiver by a certified Early Intervention professional or by a certified Early Intervention specialist under the supervision of a certified Early Intervention professional:

a. Providing families with information and training to enhance the development of the child.

b. Working with the child with a disability to promote normal development in one or more developmental domains.

c. Consulting with the child's family and other service providers to assess service needs; and plan, coordinate, and evaluate services to ensure that services reflect the unique needs of the child in all developmental domains.

C. The following functions shall not be covered under this section:

1. Screening to determine if the child is suspected of having a disability. Screening is covered as an EPSDT service provided by the primary care provider and is not covered as an Early Intervention service under this section.

2. Administration and coordination activities related to the development, review, and evaluation of the IFSP and procedural safeguards required by Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.).

3. Services other than the initial and periodic assessments that are provided but are not documented in the child's IFSP or linked to a service in the IFSP.

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

5. Services provided by a relative who is legally responsible for the child's care.

6. Services rendered in a clinic or provider's office without justification for the location.

7. Services provided in the absence of the child and a parent or other authorized caregiver identified in the IFSP with the exception of multidisciplinary team meetings, that need not include the child.

D. Qualifications of providers:

1. Individual practitioners of Early Intervention services must be certified by DBHDS as a qualified Early Intervention professional or Early Intervention specialist.

2. Certified individuals and service agencies or groups who employ or contract with certified individuals may enroll with DMAS as Early Intervention providers. In accordance with 42 CFR 431.51, recipients may obtain Early Intervention services from any willing and qualified Medicaid provider who participates in this service, or for individuals enrolled with a Managed Care Organization (MCO), from such providers available in their MCO network.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.

2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

3. Rehabilitation agencies ~~operated by community services boards~~ or comprehensive outpatient rehabilitation facilities. ~~For reimbursement methodology applicable to other~~

~~rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.~~

a. Reserved.

b. Effective October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities operated by state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

4. Rehabilitation hospital outpatient services.

12VAC30-80-96. Fee-for-service: Early Intervention (under EPSDT).

A. Payment for Early Intervention services pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, shall be the lower of the state agency fee schedule or actual charge (charge to the general public). All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of October 1, 2009, and are effective for services on or after that date. Rates are published on the agency's website at www.dmas.virginia.gov.

B. There shall be separate fees for:

1. Certified Early Intervention professionals who are also licensed as either a physical therapist, occupational therapist, speech pathologist, or registered nurse and certified Early Intervention specialists who are also licensed as either a physical therapy assistant or occupational therapy assistant; and

2. All other certified Early Intervention professionals and certified Early Intervention specialists.

C. Provider travel time shall not be included in billable time for reimbursement.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. ~~Effective for dates of service on and after July 1, 2009, rehabilitation agencies, excluding those operated by community services boards and state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800.~~ Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Reserved.

2. Effective for dates of service on or after October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities excluding those operated by state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have paid in FY 2010 minus $371,800.

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

1. Reserved.

~~For providers with~~ 2. Payments for the fiscal ~~years that do not begin on July 1, 2009, services on or before June 30, 2009, for the fiscal year in progress on that date~~ year ending or in progress on September 30, 2009, shall be settled for community services boards based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of ~~June~~ September 30, 2009.

~~C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.~~

~~D.~~ C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, there will be no inflation adjustment for outpatient rehabilitation facilities through June 30, 2012.

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Early Intervention" means EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 as set forth in 12VAC30-50-131.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

2. Serious impairment to bodily functions, or

3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-380. Medallion II MCO responsibilities.

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

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

2. Services that shall be provided outside the MCO network shall include, but are not limited to, those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360), community mental health services (rehabilitative, targeted case management and the following substance abuse treatment services; emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services), as defined in 12VAC30-50-228 and 12VAC30-50-491, and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services.

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

B. Except for those services specifically carved out in subsection A of this section, EPSDT services shall be covered by the MCO. These services shall include EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004, as set forth in 12VAC30-50-131, as identified and defined by the contracts between DMAS and the MCOs. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

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

D. Documentation requirements.

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

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

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

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

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is

less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

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

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

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

VA.R. Doc. No. R10-2080; Filed December 27, 2010, 2:24 p.m.

Final Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-226, 12VAC30-50-420, 12VAC30-50-430).**

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

Effective Date: February 16, 2011.

Agency Contact: Catherine Hancock, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (904) 225-4272, FAX (804) 786-1650, or email catherine.hancock@dmas.virginia.gov.

Summary:

Pursuant to Item 306 OO of Chapter 781 of the 2009 Acts of Assembly, the amendments implement a prior authorization review program for (i) case management services for seriously ill adults and emotionally disturbed children; (ii) youth at risk of serious emotional disturbance; and (iii) day treatment/partial hospitalization services, psychological rehabilitation, intensive community treatment, and mental health support services.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC30-50-226. Community mental health services.

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

"Certified prescreener" means an employee of the local community services board or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by ~~DMHMRSAS~~ DBHDS.

"Clinical experience" means practical experience in providing direct services to individuals with mental illness or mental retardation or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Code" means the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

~~"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.~~

"Human services field" means social work, gerontology, psychology, psychiatric rehabilitation, special education, sociology, counseling, vocational rehabilitation, and human services counseling or other degrees deemed equivalent by DMAS.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. The provider shall include the individual in the development of the ISP. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated as the needs and progress of the individual changes.

"Licensed Mental Health Professional" or "LMHP" means an individual licensed in Virginia as a physician, a clinical psychologist, a professional counselor, a clinical social worker, or a psychiatric clinical nurse specialist.

"Qualified mental health professional" or "QMHP" means a clinician in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. If the QMHP is also one of the defined licensed mental health professionals, the QMHP may perform the services

designated for the Licensed Mental Health Professionals unless it is specifically prohibited by their licenses. These QMHPs may be either a:

1. Physician who is a doctor of medicine or osteopathy and is licensed in Virginia;

2. Psychiatrist who is a doctor of medicine or osteopathy, specializing in psychiatry and is licensed in Virginia;

3. Psychologist who has a master's degree in psychology from an accredited college or university with at least one year of clinical experience;

4. Social worker who has a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education and has at least one year of clinical experience;

5. Registered nurse who is licensed as a registered nurse in the Commonwealth and has at least one year of clinical experience; or

6. Mental health worker who has at least:

a. A bachelor's degree in human services or a related field from an accredited college and who has at least one year of clinical experience;

b. Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as of January 1, 2001;

c. A bachelor's degree from an accredited college in an unrelated field with an associate's degree in a human services field. The individual must also have three years clinical experience;

d. A bachelor's degree from an accredited college and certification by the International Association of Psychosocial Rehabilitation Services (IAPSRS) as a Certified Psychiatric Rehabilitation Practitioner (CPRP);

e. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field. The individual must also have three years clinical experience; or

f. Four years clinical experience.

"Qualified paraprofessional in mental health" or "QPPMH" means an individual who meets at least one of the following criteria:

1. Registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP), as of January 1, 2001~~;~~ .

2. Has an associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness~~;~~ .

3. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, gerontology clients, or special education clients. The experience may include supervised internships, practicums and field experience.

4. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of clinical experience (including the 12 weeks of supervised experience).

5. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.

6. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.

B. Mental health services. The following services, with their definitions, shall be covered: day treatment/partial hospitalization, psychosocial rehabilitation, crisis services, intensive community treatment (ICT), and mental health supports. Staff travel time shall not be included in billable time for reimbursement.

1. Day treatment/partial hospitalization services shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals who require coordinated, intensive, comprehensive, and multidisciplinary treatment but who do not require inpatient treatment. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

a. Day treatment/partial hospitalization services shall be time limited interventions that are more intensive than outpatient services and are required to stabilize an individual's psychiatric condition. The services are delivered when the individual is at risk of psychiatric hospitalization or is transitioning from a psychiatric hospitalization to the community.

b. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or homelessness or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit behavior that requires repeated interventions or monitoring by the mental health, social services, or judicial system; or

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

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and other less intensive services may achieve psychiatric stabilization.

d. Admission and services for time periods longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, psychiatrist, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or psychiatric clinical nurse specialist.

2. Psychosocial rehabilitation shall be provided at least two or more hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, education to teach the patient about the diagnosed mental illness and appropriate medications to avoid complication and relapse, opportunities to learn and use independent living skills and to enhance social and interpersonal skills within a supportive and normalizing program structure and environment. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Authorization is required for Medicaid reimbursement.

Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals: (i) who without these services would be unable to remain in the community or (ii) who meet at least two of the following criteria on a continuing or intermittent basis:

a. Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or

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

3. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

(1) Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

(2) Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that immediate interventions by mental health, social services, or the judicial system are necessary; or

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

b. The annual limit for crisis intervention is 720 units per year. A unit shall equal 15 minutes.

4. Intensive community treatment (ICT), initially covered for a maximum of 26 weeks based on an initial assessment with continuation reauthorized for an additional 26 weeks annually based on written assessment and certification of need by a qualified mental health provider (QMHP), shall be defined as medical psychotherapy, psychiatric assessment, medication management, and case management activities offered to outpatients outside the clinic, hospital, or office setting for individuals who are best served in the community. The annual unit limit shall be 130 units with a unit equaling one hour. Authorization is required for Medicaid reimbursement. To qualify for ICT, the individual must meet at least one of the following criteria:

a. The individual must be at high risk for psychiatric hospitalization or becoming or remaining homeless due to mental illness or require intervention by the mental health or criminal justice system due to inappropriate social behavior.

b. The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for co-occurring serious mental illness and substance use disorder and demonstrates a resistance to seek out and utilize appropriate treatment options.

(1) An assessment that documents eligibility and the need for this service must be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

(2) A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.

5. Crisis stabilization services for nonhospitalized individuals shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization may be for up to a 15-day period per crisis episode following a documented face-to-face assessment by a QMHP which is reviewed and approved by an LMHP within 72 hours. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or rehospitalization, provide normative environments with a high assurance of safety and security for crisis intervention, stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization program shall provide to recipients, as appropriate, psychiatric assessment including medication evaluation, treatment planning, symptom and behavior management, and individual and group counseling. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by ~~DMHMRSAS~~ DBHDS to provide residential services but which are not institutions for mental disease (IMDs). This service shall not be reimbursed for (i) recipients with medical conditions that require hospital care; (ii) recipients with primary diagnosis of substance abuse; or (iii) recipients with psychiatric conditions that cannot be managed in the community (i.e., recipients who are of imminent danger to themselves or others). Services must be documented through daily notes and a daily log of times spent in the delivery of services. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization. Individuals must meet at least two of the following criteria at the time of admission to the service:

a. Experience difficulty in establishing and maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

b. Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

c. Exhibit such inappropriate behavior that immediate interventions by the mental health, social services, or judicial system are necessary; or

d. Exhibit difficulty in cognitive ability such that the individual is unable to recognize personal danger or significantly inappropriate social behavior.

6. Mental health support services shall be defined as training and supports to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. Authorization is required for Medicaid reimbursement. These services may be authorized for six consecutive months. This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance

with medication management; and monitoring health, nutrition, and physical condition.

a. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Services are provided to individuals who without these services would be unable to remain in the community. The individual must have two of the following criteria on a continuing or intermittent basis:

(1) Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization or homelessness or isolation from social supports;

(2) Require help in basic living skills such as maintaining personal hygiene, preparing food and maintaining adequate nutrition or managing finances to such a degree that health or safety is jeopardized;

(3) Exhibit such inappropriate behavior that repeated interventions by the mental health, social services, or judicial system are necessary; or

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

b. The individual must demonstrate functional impairments in major life activities. This may include individuals with a dual diagnosis of either mental illness and mental retardation, or mental illness and substance abuse disorder.

c. The yearly limit for mental health support services is 372 units. One unit is one hour but less than three hours.

12VAC30-50-420. Case management services for seriously mentally ill adults and emotionally disturbed children.

A. Target Group: The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90 days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. Case management shall not be billed for individuals who are in institutions for mental disease.

B. Services will be provided to the entire state.

C. Comparability of Services: Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of Services: Mental health services. Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the individualized service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual~~.~~ ;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of Providers:

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider

of the services must meet certain criteria. These criteria shall be:

a. The provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

c. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

d. The provider must be licensed as a provider of case management services by the ~~DMHMRSAS~~ DBHDS; and

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community including primary health care, support services, eligibility criteria and intake processes, generic community resources, and mental health, mental retardation, and substance abuse treatment programs;

(2) The nature of serious mental illness, mental retardation, and substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances.

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's needs for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop individual service plans;

(3) Identifying services and resources within the community and established service system to meet the individual's needs; and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal habilitative/rehabilitative and life goals; and

(4) Coordinating the provision of services by public and private providers.

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective inter- and intra-agency working relationships;

(2) Work independently, performing position duties under general supervision; and

(3) Engage and sustain ongoing relationships with individuals receiving services.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services may not be billed concurrently with intensive community treatment services, treatment foster care case management services or intensive in-home services for children and adolescents.

12VAC30-50-430. Case management services for youth at risk of serious emotional disturbance.

A. Target group: Medicaid eligible individuals who meet the ~~DMHMRSAS~~ DBHDS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including at least one face-to-face contact every 90-days. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur. Authorization is required for Medicaid reimbursement.

2. There shall be no maximum service limits for case management services. Case management services must not

be billed for individuals who are in institutions for mental disease.

B. Services will be provided in the entire state.

C. Comparability of services: Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services: Mental health services. Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;

2. Linking the individual directly to services and supports specified in the treatment/services plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed service and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment and/or community adjustment;

7. Following up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers, to the community services boards only, to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet the following criteria:

a. The provider must meet state and federal requirements regarding its capacity for administrative and financial management;

b. The provider must document and maintain individual case records in accordance with state and federal requirements;

c. The provider must provide services in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

d. The provider must be licensed as a provider of case management services by the ~~DMHMRSAS~~ DBHDS; and

e. Persons providing case management services must have knowledge of:

(1) Services, systems, and programs available in the community including primary health care, support services, eligibility criteria and intake processes, generic community resources, and mental health, mental retardation, and substance abuse treatment programs;

(2) The nature of serious mental illness, mental retardation and/or substance abuse depending on the population served, including clinical and developmental issues;

(3) Different types of assessments, including functional assessments, and their uses in service planning;

(4) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(5) The service planning process and major components of a service plan;

(6) The use of medications in the care or treatment of the population served; and

(7) All applicable federal and state laws, state regulations, and local ordinances.

f. Persons providing case management services must have skills in:

(1) Identifying and documenting an individual's need for resources, services, and other supports;

(2) Using information from assessments, evaluations, observation, and interviews to develop individual service plans;

(3) Identifying services and resources within the community and established service system to meet the individual's needs; and documenting how resources, services, and natural supports, such as family, can be utilized to achieve an individual's personal habilitative/ rehabilitative and life goals; and

(4) Coordinating the provision of services by diverse public and private providers.

g. Persons providing case management services must have abilities to:

(1) Work as team members, maintaining effective inter- and intra-agency working relationships;

(2) Work independently performing position duties under general supervision; and

(3) Engage and sustain ongoing relationships with individuals receiving services.

F. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers.

G. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

H. Payment for case management services under the plan must not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

I. Case management may not be billed concurrently with intensive community treatment services, treatment foster care case management services, or intensive in-home services for children and adolescents.

VA.R. Doc. No. R09-1937; Filed December 27, 2010, 4:19 p.m.

Proposed Regulation

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-50).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 18, 2011.

Agency Contact: Carla Russell, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (805) 786-1680, or email carla.russell@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC 1396a) provides governing authority for payments for services.

Specifically, Items 306 XX and 306 BBB of Chapter 781 of the 2009 Acts of Assembly required DMAS to convert the current reimbursement methodology for rehabilitation agencies to a statewide prospective rate for individual and group services and reduce reimbursement to long-stay hospitals.

Purpose:

Outpatient Rehabilitation Facility Reimbursement: The purpose of this regulatory action is to incorporate into 12VAC30-80-200 the changes made in the previous emergency regulation, with some modification. The proposed text here is the same as the final text in a separate final regulatory action (Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement) that also addressed 12VAC30-80-200. This regulatory action provides both the public and the agency the opportunity to further address provider questions and issues with the new methodology. There are no expected environmental benefits from these changes.

Long-Stay Hospital Reimbursement: The purpose of this action is to incorporate changes to 12VAC30-70-50 as adopted by the previous emergency regulation action: reduction of the incentive plan, elimination of an additional 2.0% that has been added annually to the escalator, and modification of the DSH utilization percentage. This proposed regulatory action is not essential to protect the health, safety, or welfare of the citizens of the Commonwealth. It is also not expected to have any environmental benefits. The issues addressed by this action are the reduction of payment amounts being made to two hospitals.

Substance:

Outpatient Rehabilitation Agency Reimbursement: This change implements a prospective statewide fee schedule methodology for outpatient rehabilitation agencies based on Current Procedural Terminology (CPT) codes. Rehabilitation services furnished by community services boards and state agencies will continue to be reimbursed on a cost basis. The fee schedule was developed to achieve savings totaling $185,900 general funds dollars as required in the Governor's budget.

Long-Stay Hospital Reimbursement: Long-stay hospitals currently are reimbursed based on the methodology in effect for all hospitals prior to the implementation of the prospective reimbursement methodology based on diagnosis-related-

groups effective July 1, 1996. Several aspects of the methodology are no longer appropriate, but have never been changed since there are only a few hospitals (two currently) being reimbursed using this methodology. The changes to the old methodology include the reduction of the "incentive plan," the elimination of an additional 2.0% annually added to the "escalator," and modification of the disproportionate share hospital (DSH) utilization threshold percentage.

The incentive plan currently pays a hospital up to 25% of the difference between the ceiling and its cost per day. As a result of the incentive plan, hospitals can be reimbursed more than their costs. The regulatory change reduces the maximum incentive plan to up to 10.5% of the difference between the ceiling and its cost per day. The escalator, which is currently inflation plus 2.0%, is used to increase the ceilings and the operating cost per day. The regulation will change the escalator to just inflation. Currently, DSH is calculated by multiplying the difference between the Medicaid utilization percentage and the Medicaid utilization threshold of 8.0% times the prospective cost per day. The regulation will increase the utilization threshold from 8.0% to 10.5%. The regulatory changes are projected to save $1.98 million (total funds) in FY10.

Note: DMAS has been in the process of implementing the Outpatient Rehabilitation Agency Reimbursement changes through a nonemergency regulatory process initiated in 2008. DMAS published a NOIRA (Town Hall 2690/4671 on 9/24/08 (VA.R. 25:3)) and had a proposed regulation (Town Hall 2690/4933) which addressed this element of the Outpatient Rehabilitation package. The final regulation made these changes permanent on March 3, 2010 (Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement--Town Hall 2690/5345, published VA.R. 26:11). The 2009 budget required DMAS to implement the Outpatient Rehabilitation Agency Reimbursement changes prior to its originally scheduled implementation date via an emergency regulation. While the agency has finalized the outpatient rehabilitation reimbursement in the previously cited action, DMAS has included the same section in this proposed regulation. By doing so the agency has the opportunity to consider provider feedback to the new reimbursement methodology.

Issues:

Outpatient Rehabilitation Facility Reimbursement: Currently, the Virginia Administrative Code contains a cost-based methodology for computing reimbursement for outpatient rehabilitation services that is subject to a ceiling (12VAC30-80-200). For rehabilitation services, Medicare and most commercial insurers use a fee schedule. As a result, outpatient rehabilitation agencies bill differently and submit a cost report only for Medicaid. Providers will no longer have to submit cost reports and DMAS will no longer have to settle the cost reports. Discontinuing both of these activities will result in administrative savings to both rehab providers and the Commonwealth.

There are no disadvantages to the citizens of the Commonwealth for these changes as they are not expected to have an impact on the delivery of these services. The advantage to the citizens of the Commonwealth is the reduction in providers and agency's costs associated with these changes. Some providers objected to the manner in which the agency implemented the new methodology. DMAS has indicated that it will continue to work with the provider community through this current regulatory process.

Long-Stay Hospitals Reimbursement: This regulatory action poses no disadvantages to the public or the Commonwealth. If the proposed change is not implemented, it will mean ongoing expenditures to two hospitals contrary to the General Assembly's directive. The primary advantage to the Commonwealth will be the reduction in payment amounts to these two enrolled Medicaid providers.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will make permanent the reduction in Medicaid reimbursements to long-stay hospitals that has been in effect since July 1, 2009. The proposed changes also include a re-proposal of changes to outpatient rehabilitation facility reimbursement methodology that was finalized in a previous regulatory action in order to afford the public and the regulants additional opportunity to provide comments.

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

Estimated Economic Impact. Pursuant to Item 306 BBB, Chapter 781 of the 2009 Acts of the Assembly, the proposed changes make permanent the reduction in Medicaid reimbursement to long-stay hospitals. The proposed reduction is comprised of 1) the reduction of the incentive plan, 2) the elimination of and additional 2.0% annually added to the escalator, and 3) modification of the disproportionate share hospital (DSH) utilization threshold percentage. These changes have already been in effect since July 1, 2009 under emergency regulations.

According to the Department of Medical Assistance Services, the incentive plan used to pay a long-stay hospital up to 25% of the difference between the ceiling and its cost per day. The proposed changes reduce the maximum incentive plan to up to 10.5% of the difference between the ceiling and its cost per day. Also, the escalator, which used to be inflation plus 2.0%, is used to increase the ceilings and the operating cost per day. The proposed regulations change the escalator to just inflation. Finally, the proposed changes modify the DSH payments. DSH payments are calculated by multiplying the difference between the Medicaid utilization percentage and the Medicaid utilization threshold and multiplying the result

with the prospective cost per day. The regulation will increase the utilization threshold from 8.0% to 10.5%, effectively reducing the difference.

The proposed changes are estimated to create a $990,000 in general fund savings and a $990,000 reduction in federal matching fund annually starting in Fiscal Year 2010. Currently, there are two long-stay hospitals. The main economic impact of this particular change on providers is the loss of $1.8 million revenue at the aggregate and the contractionary economic effects associated with reduced spending in the Commonwealth.

Another proposed change included in this regulatory action is the re-proposal of changes to outpatient rehabilitation facility reimbursement methodology that was finalized in a previous regulatory action. Exactly the same proposed language was already made permanent and published in Virginia Register of Regulations on February 1, 2010, Volume 26, Issue 11. In order to provide the public and the regulants additional opportunity to provide feedback, the Department of Medical Assistance Services proposes to the same language in this regulatory package.

Since the exact proposed language has already been finalized through a separate regulatory action and will become effective regardless of this action, there is no significant economic impact that can be attributed to this particular change other than the additional opportunity afforded to public and regulants to comment on the proposed language.

Businesses and Entities Affected. There are two long-stay hospitals receiving reimbursement from Virginia Medicaid. There are approximately 100 outpatient rehabilitation agencies receiving reimbursement from Virginia Medicaid.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The expected reduction in long-stay hospital reimbursement may reduce their demand for labor in long-stay hospital services.

Effects on the Use and Value of Private Property. The expected reduction in long-stay hospital reimbursement may reduce their asset values.

Small Businesses: Costs and Other Effects. None of the two long-stay hospitals receiving reimbursement from Virginia Medicaid are believed to be small businesses. Thus, the proposed changes do not have any costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes do not have any adverse impact on small businesses.

Real Estate Development Costs. The proposed changes do not have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Outpatient Rehabilitation Agency and Long Stay Hospital Reimbursement (12VAC30-70-50, 12VAC30-80-20, and 12VAC30-80-200).

Summary:

The proposed amendments change the reimbursement for outpatient rehabilitation agencies and comprehensive outpatient rehabilitation facilities (CORFs) from a cost-based methodology to the new fee schedule methodology. CORFs are being removed from the list of providers that are reimbursed on a cost basis in 12VAC30-80-200 and DMAS will implement a statewide fee schedule methodology for outpatient rehabilitation agencies.

The proposed amendments also reduce reimbursement to long-stay hospitals (12VAC30-70-50). Currently, these providers are reimbursed based on the methodology in effect for all hospitals prior to the implementation of the diagnosis related groups prospective reimbursement methodology. The changes to the old methodology include the reduction of the "incentive plan," the elimination of an additional 2.0% annually added to the escalator, and modification of the disproportionate share hospital (DSH) utilization threshold percentage.

12VAC30-70-50. Hospital reimbursement system.

The reimbursement system for hospitals includes the following components:

A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

1. The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

2. Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

3. The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

4. The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

5. Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

6. Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

7. Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points, (200 basis points) to the then current allowance for inflation. Effective July 1, 2009, the additional two percentage points shall no longer be included in the escalation factor. The escalation factor shall be applied in accordance with the inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

Effective July 1, 2010, through June 30, 2012, the escalation factor shall be zero. In addition, ceilings shall remain at the same level as the ceilings for long stay hospitals with fiscal year's end of June 30, 2010.

8. The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator factor.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator factor, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (§ 400), shall be considered as pass throughs and not part of the calculation. Capital interest is reimbursed the percentage of allowable cost specified in 12VAC30-70-271.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to ~~25%~~ 10.5% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

~~The table below presents three examples under the new plan:~~

~~Group Ceiling~~	~~Hospital's Allowable Cost Per Day~~	~~$~~	~~Difference % or Ceiling~~	~~$~~	~~Sliding Scale Incentive % of Difference~~
~~$230.00~~	~~$230.00~~	~~0~~	~~0~~	~~0~~	~~0~~
~~230.00~~	~~207.00~~	~~23.00~~	~~10%~~	~~2.30~~	~~10%~~
~~230.00~~	~~172.00~~	~~57.50~~	~~25%~~	~~14.38~~	~~25%~~
~~230.00~~	~~143.00~~	~~76.00~~	~~33%~~	~~19.00~~	~~25%~~

F. There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

G. Disproportionate share hospitals defined. The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria.

a. A Medicaid inpatient utilization rate in excess of ~~8%~~ 10.5% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 1 b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over ~~8.0%~~ 10.5% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of ~~8.0%~~ 10.5%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of ~~8.0%~~ 10.5% times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under subdivision 1 or 2 of this subsection shall exceed any applicable limitations upon such payments established by federal law or regulations.

H. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in ~~paragraph~~ subsection G ~~above~~ of this section) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. This log shall contain all Medicaid claims for such individuals,

including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. Any hospital which qualifies for the extensive neonatal care provision (as governed by paragraph F, above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in subdivision H 1 or 2 above.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision H 3 (ii) above.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

4. Pursuant to 12VAC30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.

2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health

of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

3. Rehabilitation agencies ~~operated by community services boards. For reimbursement methodology applicable to other rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available~~

~~source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement~~ or comprehensive outpatient rehabilitation facilities.

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. (Reserved.)

4. Rehabilitation hospital outpatient services.

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Effective for dates of service on and after July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by community services boards ~~and~~ or state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800.

2. (Reserved.)

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

~~For providers with~~ 1. Payments for the fiscal ~~years that do not begin on July 1, 2009, services on or before~~ year ending or in progress on June 30, 2009, ~~for the fiscal year in progress on that date~~ shall be settled for private rehabilitation agencies based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

2. (Reserved.)

~~C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.~~

~~D.~~ C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this subsection shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, there will be no inflation adjustment for outpatient rehabilitation facilities through June 30, 2012.

VA.R. Doc. No. R09-1968; Filed December 27, 2010, 2:23 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-370, 12VAC30-120-380).**

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

Effective Dates: December 30, 2009, through June 29, 2010.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services (DMAS) requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:10 VA.R. 1411-1417 January 18, 2010 (http://register.dls.virginia.gov/vol26/iss10/v26i10.pdf).

The emergency regulation was implemented on December 30, 2009, and the Notice of Intended Regulatory Action comment period ended March 3, 2010. The proposed regulation was submitted to the Secretary's office August 17, 2010, where it has been awaiting approval.

Federal law requires that recipients be allowed to choose between the various managed care organizations (MCOs) or managed care programs that operate in their locality. If a locality has only one MCO option and that locality meets the federal designation as "rural," then a "rural exception" option may be requested. The "rural exception" option requires managed care-eligible recipients in these specified localities to enroll with the one available MCO. Because the "rural exception" limits recipients' ability to choose, federal permission is required to implement the "rural exception" option.

The emergency regulation provides authority to DMAS to operate the "rural exception" option in localities that meet this requirement. Promulgation of this regulation will bring the Virginia Administrative Code into compliance with the federal Centers for Medicare and Medicaid Services-approved 1915(b) Managed Care Waiver, which was amended October 1, 2009, to include the "rural exception" option. If the emergency regulation lapses on December 29,

2010, DMAS will have no state authority to continue to limit recipients to the one MCO in their locality of residence.

Because of the time required by the remaining regulatory steps, it is not possible for the permanent rulemaking to be completed prior to the expiration of the current emergency regulations. For this reason DMAS is requesting an extension of six months in order to complete the necessary changes while maintaining the authority to continue to provide these MCO rural exception services and maintaining the integrity of the changes made in the emergency action.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through June 29, 2011.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R10-2004; Filed January 3, 2011, 11:43 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Proposed Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-10 through 18VAC48-50-40, 18VAC48-50-60, 18VAC48-50-90 through 18VAC48-50-160, 18VAC48-50-180, 18VAC48-50-190, 18VAC48-50-220, 18VAC48-50-240, 18VAC48-50-250, 18VAC48-50-290; adding 18VAC48-50-35, 18VAC48-50-37, 18VAC48-50-253, 18VAC48-50-255, 18VAC48-50-257; repealing 18VAC48-50-80).**

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

Public Hearing Information:

March 3, 2011 - 11 a.m. - Department of Professional and Occupational Recreation, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, VA

Public Comment Deadline: March 18, 2011.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Basis: Section 54.1-2349 states in part that the Common Interest Community Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia. In addition, § 54.1-2349 states that the board shall establish criteria for the certification of employees of common interest community managers who have principal responsibility for management services provided to common interest communities or supervisory responsibility for employees who participate directly in the provision of management services.

Section 54.1-201 states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

The regulation is mandatory to implement Chapters 851 and 871 of the 2008 Acts of Assembly.

Purpose: This revision to existing regulations is necessary to establish the certification requirements for supervisory and principal employees of common interest community managers, as well as the standards of practice and conduct for such employees. In addition, the regulations specific to common interest community managers were amended as the board determined necessary during the review process.

The amendment is necessary to fully implement Chapters 851 and 871 of the 2008 Acts of Assembly. The goal of the regulation is to establish qualifications and standards of practice and conduct for specific employees of common interest community managers in accordance with Chapters 851 and 871.

The General Assembly determined that regulatory oversight of common interest community managers is essential to protect the health, safety, and welfare of the citizens of Virginia. Minimum qualifications for certification of supervisory and principal employees of common interest community managers, renewal requirements, and the standards of conduct and practice are the general items that are addressed in the regulations.

Substance: The regulations were revised to incorporate provisions for individual certification of supervisory and principal employees of common interest community managers in accordance with § 54.1-2349 A 3 of the Code of Virginia. In addition to qualifications for certification, renewal, and reinstatement, requirements for certificateholders were added, as well as revision of the standards of conduct and practice to either incorporate new provisions for certified individuals or amend provisions that exist in the current regulations for common interest community managers to include certified individuals. The board reviewed all provisions for common interest community managers to determine their applicability to

certified supervisory and principal employees. Further, all existing regulations for common interest community managers were reviewed and amended as necessary to clarify provisions, and expand existing requirements to ensure minimum competency while not creating undue burdens and costs on the affected management firms. Based on comments received during the public comment period and discussion during the recent legislative session, the board incorporated a requirement that applicants for certification must complete a fair housing training program that includes a minimum of two contact hours and focuses on Virginia fair housing laws as they relate to the management of common interest communities. Further, the board incorporated a requirement that applicants for certification must complete a two-hour training program that encompasses Virginia laws and regulations related to common interest community management and the creation, governance, administration, and operations of associations. Both of these training programs must also be completed biannually as a requirement for renewal. Finally, the existing training program requirements were reviewed and clarified based on experiences with processing training program approval applications under the regulatory provisions that became effective April 1, 2010.

Issues: The primary advantage to the public is that specified employees of common interest community managers will be regulated to ensure the health, safety, and welfare of the public, particularly those residing in common interest communities, is protected. The only foreseeable disadvantage is that the increased costs to managers and associations will likely be passed along to association members (i.e., homeowners, unit owners, etc.).

The primary advantage to the Commonwealth is that the regulation of common interest community managers and specified employees reflects the importance that Virginia places on ensuring that those providing management services to associations and their members have met specific minimum requirements for licensure and must maintain certain standards of practice and conduct in order to provide those services.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 851 and 871 of the 2008 Acts of Assembly, the Common Interest Community Board (Board) is proposing to amend its regulations to establish certification requirements for supervisory and principal employees of common interest community managers. Additionally, the Board proposes to amend the experience and training requirements for common interest community managers so as to be more flexible.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. The current regulations include requirements for licensure as a common interest community manager. Common interest community managers are firms that provide common interest community management services. The regulations do not currently provide for licensure or certification for the employees of common interest community managers.

Chapters 851 and 871 of the 2008 Acts of Assembly state that:

> *On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager.*

Consequently the Board proposes to establish in these regulations certification requirements for supervisory and principal employees of common interest community managers.

The proposed certification requirements include a fee of $75 for each two-year period of certification. Additionally, for both initial certification and again every two years for certification renewal, individuals must complete 1) two hours of Virginia common interest community law and regulation training and 2) two hours of fair housing training as it relates to the management of common interest communities in Virginia. According to the Department of Professional and Occupational Regulation (Department) law firms currently offer training along the lines of the training requirement for Virginia common interest community law and regulation. The Department believes it is likely, though not certain, that the Community Association Institute will offer via webinar qualifying Virginia common interest community law and regulation training. This would allow certificate applicants and holders to avoid travel costs in obtaining the required training. Currently the Department offers free fair housing law training that is not specific to the management of common interest communities in Virginia. The Department expects that law firms will offer qualifying fair housing training as it relates to the management of common interest communities in Virginia, and that the Community

Association Institute may also offer such qualifying training via webinar. The fee again would likely be approximately $50.

According to the Department, several firms have been unable to meet the existing qualifications for licensure and many provisional licensees have informed the board that they will likely be unable to fulfill the current requirements prior to the June 30, 2011, expiration date of the provisional license. As a result, the board is proposing tiered qualifications to allow for more qualifying experience and less hours of approved training as well as provisions requiring more hours of approved training and less experience for licensure. The increased flexibility will likely reduce costs for common interest community managers.

Businesses and Entities Affected. The proposed amendments affect principal and supervisory employees of common interest community managers. Community managers may be impacted by the certification requirements for their employees; homeowners and unit-owners within common interest communities may be indirectly affected. The number of employees required to be certified under these proposed regulations is not known. However, there are approximately 200 licensed common interest community managers, who may have only one employee, or up to ten employees or more. Assuming an average of about 5 employees per community manager, it is estimated that about 1,000 people would become certified.

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

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments will moderately increase costs for common interest community firms through certification required fees for employees. Those firms whose employees do not already meet the requirements for certification beyond the fees will encounter additional costs. On the other hand, the increased flexibility in meeting manager licensure requirements will reduce costs for some firms.

Small Businesses: Costs and Other Effects. The proposed amendments will moderately increase costs for small common interest community firms through certification required fees for employees. Those firms whose employees do not already meet the requirements for certification beyond the fees will encounter additional costs. On the other hand, the increased flexibility in meeting manager licensure requirements will reduce costs for some small firms.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are no obvious alternatives that would significantly reduce adverse impact to small businesses and still meet the requirements of Chapters 851 and 871 of the 2008 Acts of Assembly.

Real Estate Development Costs. The proposed amendments are unlikely to have a large impact on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval.

Summary:

The proposed amendments establish certification requirements for supervisory and principal employees of common interest community managers and provide more flexible experience and training requirements for common interest community managers.

Part I
General

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

The following words, terms, and phrases when used in this chapter shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise.

"Active status" means the status of a certificated person in the employ of a common interest community manager.

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager that has submitted an application for licensure or an individual who has submitted an application for certification.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Certified principal or supervisory employee" refers to any individual who has principal responsibility for management services provided to a common interest community or who has supervisory responsibility for employees who participate directly in the provision of management services to a common interest community, and who holds a certificate issued by the board.

"Contact hour" means 50 minutes of instruction.

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

"Direct supervision" means exercising oversight and direction of, and control over, the work of another.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

~~"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed common interest community manager.~~

"Gross receipts" means all revenue derived from providing management services to common interest communities in the Commonwealth of Virginia, excluding pass-through expenses or reimbursement of expenditures by the regulant on behalf of an association.

"Principal responsibility" means having the primary obligation for the direct provision of management services provided to a common interest community.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the board or an individual who holds a certificate issued by the board.

"Reinstatement" means the process and requirements through which an expired license or certificate can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license ~~for another period of time~~ or certificate.

"Responsible person" means the employee, officer, manager, owner, or principal of the firm who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm or affect any certificateholder with the firm. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation or other registered business entity, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervisory responsibility" means providing formal supervision of the work of at least one other person. The individual who has supervisory responsibility directs the work of another employee or other employees, has control over the work performed, exercises examination and evaluation of the employee's performance, or has the authority to make decisions personally that affect the management services provided.

Part II
Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure or certification shall submit an application with the appropriate fee specified in 18VAC48-50-60. Application shall be made on forms provided by the ~~department~~ board or its agent.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be

considered complete until all required documents are received by the board.

~~A~~ An individual or firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. ~~Firms~~ An individual or firm that ~~fail~~ fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC48-50-30. Qualifications for licensure as a common interest community manager.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for a common interest community manager license shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a common interest community manager license shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

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

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

E. The applicant for a common interest community manager license shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy with the firm as the named bondholder or insured must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant for a common interest community manager license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant for a common interest community manager license, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the ~~applicant's~~ principals of the applicant for a common interest community manager license hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

H. The applicant for a common interest community manager license shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for a common interest community manager license shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

I. The applicant for a common interest community manager license shall attest that all employees of the firm who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate as a certified principal or supervisory employee issued by the board or shall be under the direct supervision of a certified principal or supervisory employee.

~~Applicants~~ J. An applicant for ~~licensure~~ a common interest community manager license shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

~~J.~~ K. In lieu of the provisions of subsection ~~I~~ J of this section, an applicant for a common interest community manager license may be licensed provided the applicant certifies to the board that the applicant has ~~(i)~~ at least one supervisory employee ~~or~~ , officer ~~with five years of experience in providing management services and who has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, involved in all aspects of the management services offered and provided by the firm and (ii) at least 50% of persons who have principal responsibility for management services to a common interest community in the Commonwealth of Virginia meet one of the following~~ , manager, owner, or principal of the firm involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

~~1. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;~~

~~2. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application;~~

~~3. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or~~

~~4. Have completed an introductory training program, as set forth in 18VAC48-50-250 A, and passed a certifying examination approved by the board and certify having two years experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application.~~

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

2. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to provide management services;

3. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to provide management services; or

4. Has not completed a board-approved training program but who, in the judgment of the board, has obtained the equivalent of such training program by documented course work that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter, and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to provide management services.

~~K.~~ L. The firm shall designate a responsible person.

18VAC48-50-35. Qualifications for certification as a certified principal or supervisory employee.

A. Applicants for certification as a certified principal or supervisory employee shall meet the requirements set out in this section.

B. The applicant for certification shall be at least 18 years of age.

C. The applicant for certification shall have a high school diploma or its equivalent.

D. The applicant for certification shall provide a mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided. The mailing address provided shall serve as the address of record.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant for certification shall disclose the following information:

1. All felony convictions.

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

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

F. The applicant for certification shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the certificate is in effect.

G. The applicant for certification shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered to provide management or related services; and the board, in its discretion, may deny certification to any applicant for certification who has been subject to any form of adverse disciplinary action, including but not limited to reprimand, revocation, suspension or denial, imposition of a monetary penalty, requirement to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining certification in Virginia.

H. The applicant for certification shall provide all relevant information for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, all as related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for certification shall further disclose whether or not he was the subject of any adverse disciplinary action, including revocation of a license, certificate, or registration within the seven-year period immediately preceding the date of application.

I. An applicant for certification may be certified provided the applicant provides proof to the board that the applicant meets one of the following:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute and certifies having provided management services for a period of three months immediately preceding application;

2. Holds an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certifies having two years of experience in providing management services. Of the required two years experience, a minimum of six months of experience must have been gained immediately preceding application;

3. Holds an active designation as an Association Management Specialist by Community Associations Institute and certifies having two years of experience in providing management services. Of the required two years experience, a minimum of three months of experience must have been gained immediately preceding application; or

4. Has completed an introductory training program as set forth in 18VAC48-50-250 A and passed a certifying examination approved by the board and certifies having two years experience in providing management services. Of the required two years experience, a minimum of six months of experience must have been gained immediately preceding application.

J. The applicant for certification shall provide the name of his employing common interest community manager, if applicable.

K. The applicant for certification shall provide proof of completion of two hours of Virginia common interest community law and regulation training as approved by the board. Initial certificateholders have one year from the date the certificate is issued to complete the required common interest community law and regulation training.

L. The applicant for certification shall provide proof of completion of two hours of fair housing training as it relates to the management of common interest communities in Virginia and as approved by the board. Initial certificateholders have one year from the date the certificate is issued to complete the required fair housing training.

18VAC48-50-37. Licensure and certification by reciprocity.

A. The board may waive the requirements of 18VAC48-50-30 J and K and issue a license as a common interest community manager to an applicant who holds an active, current license, certificate, or registration in another state, the District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

B. The board may waive the requirements of 18VAC48-50-35 H and J and issue a certificate as a certified employee to an applicant who holds an active, current license, certificate, or registration in another state, the District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

18VAC48-50-40. Application denial.

The board may refuse initial licensure or certification due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant. ~~The board, at its discretion, may deny licensure to~~

~~any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due (excluding annual assessment in ~~18VAC48-50-80)~~ 18VAC48-50-70)	When Due
Initial Common Interest Community Manager Application	$100	+	25	$125	With ~~initial~~ application ~~filed on or after January 1, 2009~~
Common Interest Community Manager Renewal	$100			$100	With renewal application
Common Interest Community Manager Reinstatement (includes a $200 reinstatement fee in addition to the regular $100 renewal fee)	$300			$300	With renewal application
Certified Principal or Supervisory Employee Initial Application	$75			$75	With application
Certified Principal or Supervisory Employee Renewal	$75			$75	With renewal application
Certified Principal or Supervisory Employee Reinstatement (includes a $75 reinstatement fee in addition to the regular $75 renewal fee)	$150			$150	With renewal application
Training Program Provider Initial Application	$100			$100	With application
Training Program Provider Additional Program	$50			$50	With application

*In accordance with § 55-530.1 of the Code of Virginia.

18VAC48-50-80. ~~Provisional licenses.~~ (Repealed.)

~~Provisional licenses will be subject to the annual assessment for each year that the provisional license is in effect. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable documentation may include, but is not limited to, audits, tax returns, or financial statements.~~

~~Provisional licensees must submit annual proof of current bond or insurance policy in accordance with 18VAC48-50-30 D, and are also subject to the provisions of 18VAC48-50-150 D. Failure to submit the annual assessment and proof of current bond or insurance policy within 30 days of the request by the board shall result in the automatic suspension of the license.~~

Part IV
Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A certificate issued under this chapter shall expire two years from the last day of the month in which it was issued. A fee shall be required for renewal. In accordance with § 54.1-2346 F of the Code of Virginia, provisional licenses shall expire on June 30, 2011, and shall not be renewed.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon (i) completion of the renewal application, (ii) submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 ~~D~~ E, and (iii) payment of the fees specified in 18VAC48-50-60 and 18VAC48-50-70.

B. Prior to the expiration date shown on the certificate, certificates shall be renewed upon (i) completion of the renewal application; (ii) submittal of proof of completion of two hours of fair housing training as it relates to the management of common interest communities and two hours of Virginia common interest community law and regulation training, both as approved by the board and completed within the two-year certificate period immediately prior to the expiration date of the certificate; and (iii) payment of the fees specified in 18VAC48-50-60.

C. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license or certificate may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et seq.) of this chapter.

~~B.~~ D. Applicants for renewal shall continue to meet all of the qualifications for licensure and certification set forth in ~~18VAC48-50-30~~ Part II (18VAC48-50-20 et seq.) of this chapter.

18VAC48-50-110. Reinstatement of common interest community manager license and certified principal or supervisory employee certificate required.

A. If all of the requirements for renewal of a license~~, including receipt of the fees by the board and submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D~~ as specified in 18VAC48-50-100 A are not completed within 30 days of the license expiration date, the ~~regulant~~ licensee shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

B. If all of the requirements for renewal of a certificate as specified in 18VAC48-50-100 B are not completed within 30 days of the certificate expiration date, the certificateholder shall be required to reinstate the certificate by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

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

~~C.~~ D. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-120. Status of license or certificate during the period prior to reinstatement.

A regulant who applies for reinstatement of a license or certificate shall be subject to all laws and regulations as if the regulant had been continuously licensed or certified. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license or certificate for the same reasons as ~~it~~ the board may refuse initial licensure or certification, or discipline a ~~current~~ regulant.

The board may deny renewal or reinstatement of a license or certificate if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure or certification, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Part V
Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia, or revoke, suspend or refuse to renew any license or certificate when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-150. Maintenance of license or certificate.

A. No license or certificate issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the

license or certificate to the board. In addition to the address of record, a physical address is required for each license or certificate. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure or certification found in 18VAC48-50-30 or 18VAC48-50-35 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a ~~regulant~~ licensee shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 ~~D~~ E within five days of the change.

E. A licensee shall report to the board the discharge or termination of active status of an employee holding a certificate within 30 days of the discharge or termination of active status.

18VAC48-50-160. Maintenance and management of accounts.

~~Regulants~~ Licensed firms shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those funds of the common interest community manager.

18VAC48-50-180. Notice of adverse action.

A. ~~Regulants~~ Licensed firms shall notify the board of the following actions against the firm, the responsible person, and any principals of the firm:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license or certificate revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, ~~of any felony or of any misdemeanor~~ in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. Certified principal or supervisory employees shall notify the board, and the responsible person of the employing firm, if applicable, of the following actions against themselves:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC48-50-190. Prohibited acts.

A. The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Allowing ~~the common interest community manager~~ a license or certificate issued by the board to be used by another.

3. Obtaining or attempting to obtain a license or certificate by false or fraudulent representation, or maintaining, renewing, or reinstating a license or certificate by false or fraudulent representation.

4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

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

10. ~~Incompetence in providing~~ Egregious or repeated violations of generally accepted standards for the provision of management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to §§ 55-510 (Property ~~Owners~~ Owners' Association Act), 55-79.74:1 (Condominium Act), and 55-474 (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Advertising in any name other than the name or names in which licensed.

19. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include, but not be limited to, the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Record retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

B. Prior to commencement of the terms of the contract or acceptance of payments, the contract shall be signed by ~~the regulant~~ an authorized official of the licensed firm and the client or the client's authorized agent.

18VAC48-50-220. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a regulant must respond to an inquiry by the board or its agent within 21 days.

18VAC48-50-240. Approval of common interest community manager training programs.

Each provider of a training program shall submit an application for program approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC48-50-60, the application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Program contact hours;

4. Schedule of training program, if established, including dates, times, and locations;

5. Instructor information, including name, license ~~number or numbers~~ or certificate number(s), if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject-matter knowledge and qualifications acceptable to the board;

6. A summary of qualifications and experience in providing training ~~for common interest communities~~ under this chapter;

7. Training program and material fees; and

8. Training program syllabus.

18VAC48-50-250. ~~Training~~ Introductory and comprehensive training program requirements.

A. In order to qualify as an introductory training program under ~~18VAC48-50-30 J 4~~ 18VAC48-50-35 H or J, the introductory training program must include a minimum of 16 contact hours and the syllabus shall encompass all of the subject areas set forth in subsection C of this section.

B. In order to qualify as a comprehensive training program under 18VAC48-50-30 J ~~1~~, the comprehensive training program must include a minimum of 80 contact hours and the syllabus shall include at least 40 contact hours encompassing all of the subject areas set forth in subsection C of this section and may also include up to 40 contact hours in other subject areas approved by the board.

C. The following subject areas as they relate to common interest communities and associations shall be included in ~~each~~ all comprehensive and introductory training ~~program~~ programs. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Governance, legal matters, and communications;

2. Financial matters, including budgets, reserves, investments, internal controls, and assessments;

3. Contracting;

4. Risk management and insurance;

5. Management ethics for common interest community managers;

6. Facilities maintenance; and

7. Human resources.

D. All training programs are required to have a final, written examination.

~~E. All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.~~

18VAC48-50-253. Virginia common interest community law and regulation training program requirements.

In order to qualify as a Virginia common interest community law and regulation training program for applicants for and renewal of certificates issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass Virginia laws and regulations related to common interest community management and creation, governance, administration, and operations of associations.

18VAC48-50-255. Fair housing training program requirements.

In order to qualify as a fair housing training program for applicants for and renewal of certificates issued by the board, the fair housing training program must include a minimum of two contact hours and the syllabus shall encompass Virginia fair housing laws related to the management of common interest communities.

18VAC48-50-257. Documentation of training program completion required.

All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.

18VAC48-50-290. Examinations.

All examinations required for licensure or certification shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

VA.R. Doc. No. R10-2069; Filed December 21, 2010, 2:30 p.m.

Proposed Regulation

Title of Regulation: **18VAC48-70. Common Interest Community Ombudsman Regulations (adding 18VAC48-70-10 through 18VAC48-70-130).**

Statutory Authority: §§ 54.1-201 and 54.1-530 of the Code of Virginia.

Public Hearing Information:

March 3, 2011 – 10 a.m. - Department of Professional and Occupational Recreation, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, VA

Public Comment Deadline: March 18, 2011.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive,

Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Basis: Section 55-530 I states that "[t]he Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter." In addition, § 55-530 E states that "[t]he Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. . . "

Section 54.1-201 states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

The regulation is mandatory to implement Chapters 851 and 871 of the 2008 Acts of Assembly.

Purpose: The new regulation establishes the requirement that each association must establish reasonable procedures for (i) the resolution of written complaints from the members of the association and other citizens, (ii) recordkeeping related to complaints filed, (iii) forms and procedures to be provided, (iv) transmittal of information to members regarding the Office of the Common Interest Community Ombudsman, and (v) filing a notice of final adverse decision with the board. The new regulation is necessary to implement Chapters 851 and 871 of the 2008 Acts of Assembly. The goal of the regulation is establish the requirements for associations to handle complaints and provide information to the public for filing a notice of adverse decision with the board in accordance with Chapters 851 and 871.

Substance: The regulation includes provisions required pursuant to § 55-530 E, F, G, and I of the Code of Virginia. This includes, but may not be limited to, requirements for the association complaint process, process for filing a notice of final adverse decision, submitting an inquiry to the Office of the Common Interest Community Ombudsman, and related provisions.

Issues: The primary advantage to the public is that associations will be required to establish and utilize written complaint procedures to ensure the resolution of complaints from their members, and to inform their membership of the right to file a notice of final adverse decision with the board if the association issues a final decision adverse to their complaint. No disadvantage to the public could be identified.

The primary advantage to the Commonwealth is that the regulation will require association complainants to seek resolution within their association prior to filing any complaint with the Office of the Common Interest Community Ombudsman. No disadvantage to the Commonwealth could be identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to § 55-530, the Common Interest Community Board (Board) proposes to establish new regulations to require that common interest community (CIC) associations set rules for receiving and considering complaints from members and other citizens. Specifically, these proposed regulations will 1) require CIC associations to distribute their complaint policies and procedures to members, 2) require the maintenance of association complaint records, 3) set time frames in which CIC associations must complete certain actions, 4) indicate the consequences for failure of an association to establish and utilize a complaint procedure and 5) establish procedures and forms for filing a notice of final adverse decision.

Result of Analysis. The benefits likely exceed the costs for most proposed provisions of these new regulations. There is insufficient information to ascertain whether benefits outweigh costs for one of these proposed provisions.

Estimated Economic Impact. In 2008, the legislature made significant changes to the statutory provisions governing CICs. Amongst these changes was a requirement that the Board promulgate regulations that mandate CIC associations establish reasonable procedures for the resolution of written complaints from the members of an association and other citizens. By statute, associations must 1) maintain a record of complaints for at least a year, 2) provide complaint forms or written complaint procedures to complainants and 3) provide the Board with information, upon request, about complaints that have been referred to the Board after an associations final adverse decision.

The statute allows complainants to give notice of a final adverse decision to the Board within 30 days, with payment of a $25 fee and in accordance with the regulations that the Board is required to promulgate. The statute allows the Board to waive or refund the $25 fee for good cause shown.

The Board now proposes regulations in accordance with its statutory mandate. These regulations include:

1) pertinent definitions,

2) a stipulation that any documents that are required to be provided to the Board, or its director, shall be filed with the Department of Professional and Occupational Regulation (DPOR),

3) a requirement that CIC associations adopt written complaint procedures either within 90 days of promulgation of these regulations or within 90 days of initial registration with the Board,

4) a requirement that associations certify, in each required annual report, that their complaint procedures are current and in effect,

5) specific requirements for association complaint procedures which include a time frame of seven days for associations to provide written acknowledgement of the receipt of a complaint and to provide a written notice of final determination after that determination is made,

6) requirements, in accordance with the statute, for distribution of association complaint procedures,

7) a requirement that associations maintain record of complaints in accordance with statute and a requirement that associations provide documents requested by the director within 14 (calendar) days,

8) notice that associations that fail to comply with these promulgated regulations are subject to penalties set by the legislature, and

9) procedures for the Board receive and review any final adverse decisions that are referred to the Board by complainants.

Most of the provisions of these regulations closely follow and, in some cases, further clarify the statutory requirements with which CIC associations must comply; while there will be costs (bookkeeping costs, costs for providing documentation to the Board and costs for providing required notifications to complainants) associated with these requirements, they can be attributed to the underlying legislation rather than these proposed regulations. To the extent that these regulations allow affected entities to better understand their statutory obligations, these proposed regulations will provide a benefit for those entities.

The provisions of these proposed regulations that entail the Board setting time frames that are outside the statutory framework are the seven day time frame for notification of receipt of complaint, the seven day time frame for notification of final determination and the 14 (calendar) day time frame for CIC associations to provide documentation when requested by the Board or the director. DPOR reports that the Board chose to keep all time frames in calendar days to provide consistency throughout the regulations and that they chose time frames that they considered sufficient for both small and large associations to be able to provide required notifications or gather and deliver required documents. These provisions may, however, put small associations (that have fewer business days per week) at a distinct disadvantage in being able to meet regulatory requirements. Since these are new regulations that will newly impose these requirements, there is no information yet that would indicate whether smaller associations would be disadvantaged enough to outweigh the benefits of having regulatory time frames that allow complainants to receive required notifications quickly and the Board to gather required information expeditiously.

Businesses and Entities Affected. DPOR reports that there are approximately 4,650 CIC associations currently registered with the Board.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action may change the way some CIC associations manage their complaint processes.

Small Businesses: Costs and Other Effects. Small businesses CIC management firms may incur bookkeeping, documentation and mail costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board may wish to change their 7 and 14 calendar day time frames for associations so that these time frames are counted in business days. This would allow associations with varying numbers of business days per week the same chance to comply with this regulatory provision.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval.

Regarding the comments pertaining to the sufficiency of seven days for notification of receipt of complaint, seven days

for notification of final determination, and 14 days for an association to provide documentation when requested by the board or the director, the timeframes were established after deliberate consideration and are consistent with similar timeframes contained in the Property Owners' Association Act and the Condominium Act. The timeframes specified were carefully considered by the board, including their applicability to both large and small associations. The committee that developed the regulations consisted of a broad representation of individuals, including members of associations, common interest community managers, and attorneys specializing in common interest communities.

The two separate provisions that require notification of receipt of complaint to the complainant within seven days (subdivision 4 of 18VAC48-70-50) and notice of the final determination within seven days (subdivision 8 of 18VAC48-70-50) are to ensure prompt notification and are consistent with similar timeframes contained in the Property Owners' Association Act and the Condominium Act. Specifically, § 55-513 B of the Property Owners' Association Act provides the requirements by which an association must abide before imposing charges or suspension of a members right to use facilities. One of the requirements is the members' opportunity to be heard before any such charges or suspension may be imposed. The statute specifies that the hearing result must be delivered to the member within seven days of the hearing. In addition, § 55-79.80:2 of the Condominium Act includes provisions mirroring those contained in § 55-513 B of the Property Owners' Association Act, including the seven-day notification provision. The requirement that the notice of final determination be delivered to the complainant within seven days is necessary because the complainant must meet the statutorily mandated timeframe of 30 days for filing the notice of final adverse decision. If the board authorized a longer time period, then the complainant could have difficulty compiling the necessary information to file a notice of final adverse decision within the 30-day timeframe.

The regulation that requires an association to provide documentation requested by the board or the director within 14 days of the request (18VAC48-70-70 B) includes a provision for extending the timeframe specified upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request. In addition, the regulation is consistent with similar requirements for common interest community managers (which requires production of documents within 10 days of a request by the board). Further, this provision is necessary for ensuring the protection of the welfare of the public by requiring prompt response from the association when the department is reviewing a notice of final adverse decision submitted by a citizen.

Summary:

The proposed regulation requires that common interest community (CIC) associations set rules for receiving and considering complaints from members and other citizens. Specifically, the proposed regulations (i) require CIC associations to distribute their complaint policies and procedures to members, (ii) require the maintenance of association complaint records, (iii) set time frames in which CIC associations must complete certain actions, (iv) indicate the consequences for failure of an association to establish and utilize a complaint procedure, and (v) establish procedures and forms for filing a notice of final adverse decision.

CHAPTER 70
COMMON INTEREST COMMUNITY OMBUDSMAN REGULATIONS

Part I
General

18VAC48-70-10. Definitions.

Section 55-528 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association

Board

Common interest community

Declaration

Director

Governing board

Lot

Section 55-79.41 of the Code of Virginia provides definition of the following term as used in this chapter:

Condominium instruments

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

"Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

"Association complaint" means a written complaint filed by a member of the association or citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or

decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 55-530 of the Code of Virginia. An appeal process, if applicable, shall be set out in the association governing documents or in a complaint procedure adopted by the association, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.

"Association governing documents" means collectively the applicable organizational documents, including but not limited to the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

18VAC48-70-20. Submission of documentation.

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

Part II
Association Complaint Procedure

18VAC48-70-30. Requirement for association to develop an association complaint procedure.

In accordance with § 55-530 E of the Code of Virginia, each association shall have a written process for resolving association complaints from members and citizens. The association complaint procedure or form shall conform with the requirements set forth in § 55-530 of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with § 55-530 of the Code of Virginia or this chapter.

18VAC48-70-40. Establishment and adoption of written association complaint procedure.

A. Associations registered with the board before [the effective date of this chapter] shall establish and adopt an association complaint procedure within 90 days of [the effective date of this chapter].

B. Associations filing an initial application for registration must certify that an association complaint procedure has been or will be established and adopted by the governing board within 90 days of such filing.

C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

18VAC48-70-50. Association complaint procedure requirements.

The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with § 55-530 of the Code of Virginia or the requirements of this chapter.

1. The association complaint must be in writing.

2. A sample of the form, if any, on which the association complaint must be filed shall be provided upon request.

3. The association complaint procedure shall include the process by which complaints shall be delivered to the association.

4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.

5. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.

6. Any specific documentation that must be provided with the association complaint shall be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.

7. Notice of the date, time, and location that the matter will be considered shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within a reasonable time prior to consideration as established by the association complaint procedure.

8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.

9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

18VAC48-70-60. Distribution of association complaint procedure.

A. The association complaint procedure must be readily available to all members of the association and citizens.

B. The association complaint procedure shall be distributed using the association's established reasonable, effective, and free method, appropriate to the size and nature of the association, for communication with the governing board pursuant to §§ 55-79.75:1 and 55-510.2 of the Code of Virginia.

C. The association complaint procedure shall be included as an attachment to the resale certificate or the association disclosure packet.

D. Members of the association shall be reminded by the association annually of the availability of the association complaint procedure by using the method of communication established pursuant to §§ 55-79.75:1 and 55-510.2 of the Code of Virginia.

18VAC48-70-70. Maintenance of association record of complaint.

A. A record of each association complaint filed with the association shall be maintained in accordance with § 55-530 E 1 of the Code of Virginia.

B. Unless otherwise specified by the director or his designee, the association shall provide to the director or his designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or his designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

18VAC48-70-80. Failure of association to establish and utilize association complaint procedure.

Failure of an association to establish and utilize an association complaint procedure in accordance with this chapter may result in the board seeking any of the remedies available pursuant to Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

Part III
Final Adverse Decision

18VAC48-70-90. Filing of notice of final adverse decision.

A complainant may file a notice of final adverse decision in accordance with § 55-530 F of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter, and for which all avenues for appeal, if applicable, within the association have been exhausted.

1. The notice shall be filed within 30 days of the date of the final adverse decision.

2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:

a. Name and contact information of complainant;

b. Name, address, and contact information of association;

c. Applicable association governing documents; and

d. Date of final adverse decision.

3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.

4. The notice shall be accompanied by a $25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

18VAC48-70-100. Waiver of filing fee.

In accordance with § 55-530 F of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.

18VAC48-70-110. Review of final adverse decision.

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgment of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The notice of adverse decision will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

In accordance with § 55-530 G of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

18VAC48-70-120. Decision from the notice of final adverse decision.

Upon review of the notice of final adverse decision in accordance with § 55-530 G of the Code of Virginia, if the director determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board, the director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the board.

The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board shall be a matter within the sole discretion of the director. Such decision is final and not subject to further review. The determination of the director shall not be binding upon the complainant or the association that made the final adverse decision.

Part IV
Office of the Common Interest Community Ombudsman

18VAC48-70-130. Purpose, responsibilities, and limitations.

The Office of the Common Interest Community Ombudsman shall carry out those activities as enumerated in subsection C of § 55-530 of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the Common Interest Community Board. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the names of the forms. The forms are also available for public inspection at the Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC48-70)

Association Complaint Form (10/09).

Request for Waiver of Filing Fee (10/09).

Notice of Final Adverse Decision (10/09).

VA.R. Doc. No. R09-1873; Filed December 21, 2010, 2:29 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Fast-Track Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-170, 18VAC65-20-435, 18VAC65-20-630).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2011.

Effective Date: March 3, 2011.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Funeral Directors and Embalmers the authority to promulgate regulations, administer a registration and renewal program, and discipline regulated professionals. In addition, specific statutory authority for the Board of Funeral Directors and Embalmers to regulate and inspect funeral service establishments and crematories is found in § 54.1-2803 of the Code of Virginia.

Purpose: Clarification that the crematory manager does not have to be a licensed funeral director or funeral service provider will allow crematories that only deal directly with licensed funeral establishments to hire persons who are trained and certified in the operation of a crematory but without all the education, examination, and experience

required to become a licensee. Crematories that deal directly with the public in providing cremation services are required to be licensed establishments and have a licensee as the manager of record. In either case, the crematory manager and persons who operate the retort in a crematory are required to hold certification to ensure that the facility is being operated consistent with current emission standards and other requirements that protect the health and safety of the public and protect the dignity and integrity of human remains.

Rationale for Using Fast-Track Process: The regulatory changes were discussed and agreed upon with the participation of funeral service providers, crematory certification organizations, and advocacy representatives at an open meeting of the board. Therefore, the board does not anticipate any objection to the proposed changes.

Substance: This fast-track action makes the time frame for notification of a change in ownership or management consistent with the notification requirement in 18VAC65-20-60. In 18VAC65-20-435, the amendments replace the term "manager of record" and clarify that the manager of a crematory is not required to be a licensed funeral provider. The amendments also add the complete name of the appendices referenced for ease of compliance by licensees.

Issues: The advantages to the public are clarification of current requirements to ensure that crematory managers and operators hold certification but are not required to become funeral service licensees. Current certification assures competency for operators while not placing an unnecessary burden of licensure for the managers. With the steady increase in cremations, the increased availability of crematories to provide cremation service to establishments may help to contain costs for families. There are no disadvantages. With clarification in the regulation, there is less confusion among licensees and owners and therefore less staff time spent in explaining the rules and the board's intent. There are no other advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Funeral Directors and Embalmers proposes to 1) clarify that the notification time frame for a change in ownership or management is consistent throughout the regulations, 2) clarify that the manager of a crematory is not required to be a licensed funeral provider, and 3) add the complete name of the forms referenced in the regulations.

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

Estimated Economic Impact. The Board of Funeral Directors and Embalmers proposes to 1) clarify that owner or licensed manager is required to request a reinspection of the establishment within 30 days following a change in ownership, but is not required to notify the board within 30 days which is established as 14 days in 18VAC65-20-60, 2) clarify that the manager of a crematory is not required to be a licensed funeral provider, and 3) add the complete name of the forms referenced in the regulations.

According to the Department of Health Professions all of the proposed changes are clarifications of the current requirements and do not represent a change in current policy or practice. Thus, no significant economic effect is expected other than reducing the likelihood for potential misunderstandings and the communication costs that may be associated with such misunderstandings.

Businesses and Entities Affected. There are approximately 507 licensed funeral establishments in Virginia. Of these, approximately 76 are stand-alone crematories that do not do business directly with the general public.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant effect on employment is expected.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. Even though of the 507 licensed funeral establishments approximately 350 would be considered as small businesses, the proposed changes do not create any significant costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-20.

Summary:

This fast-track action makes the time frame for notification of a change in ownership or management consistent with 18VAC65-20-60, clarifies that the manager of a crematory is not required to be a licensed funeral provider, and adds the complete name of the forms referenced in the regulation.

Part III
Requirements for Licensure

18VAC65-20-170. Requirements for an establishment license.

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the funeral service licensee or licensed funeral director designated by the ownership to be manager of the establishment shall be included on the license.

B. Except as provided in § 54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate manager of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least 45 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall ~~notify the board,~~ request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18VAC65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment.

18VAC65-20-435. Registration of crematories.

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be the crematory manager ~~of record for the crematory~~ shall be included on the application. The owner of the crematory shall not abridge the authority of the crematory manager ~~of record~~ relating to compliance with the laws governing the practice of funeral services and regulations of the board.

B. Every crematory, regardless of how owned, shall have a manager ~~of record~~ who has (i) achieved certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCFA); or other certification recognized by the board and (ii) received training in compliance with requirements of the Occupational Health and Safety Administration (OSHA). Every crematory manager ~~of record~~ registered by the board prior to July 8, 2009, shall have one year from that date to obtain such certification.

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;

2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as crematory manager ~~of record~~; and

3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA); the International Cemetery, Cremation and Funeral Association (ICCFA); or other certification recognized by the board. Every operator in a crematory registered by the board prior to July 8, 2009, shall have one year from that date to obtain such certification. Persons receiving training toward certification to operate a retort shall be allowed to work under the supervision of an operator who holds certification for a period not to exceed six months.

E. A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

F. The board may take disciplinary action against a crematory registration for a violation of § 54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or cremains.

Part VIII
Pricing Standards and Forms

18VAC65-20-630. Disclosures.

Funeral providers shall make all required disclosures and provide accurate information from price lists pursuant to the rules of the Federal Trade Commission. Price lists shall comply with requirements of the FTC and shall contain the information included in ~~Appendices I, II, and III of this chapter~~:

APPENDIX I - General Price List;

APPENDIX II - Casket Price List, Outer Burial Container Price List; and

APPENDIX III - Itemized Statement of Funeral Goods and Services Selected.

NOTICE: The following forms used in administering the regulation have been filed by the Board of Funeral Directors and Embalmers. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the names of the forms. The forms are also available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC65-20)

~~Funeral Service Provider Application (rev. 4/08).~~

~~Application for Courtesy Card (rev. 7/08).~~

~~Funeral Service Establishment Application (rev. 3/08).~~

~~Application for Notification of Establishment Changes (rev. 7/08).~~

~~Waiver of Full-time Manager Application (rev. 7/08).~~

~~Crematory Registration Application (rev. 4/09).~~

~~Verification of State Licensure Form (rev. 3/08).~~

~~Surface Transportation and Removal Service Application (rev. 6/08).~~

~~Continuing Education Provider Application (rev. 3/08).~~

~~Continuing Education Summary Form (rev. 7/07).~~

~~Application for Reinstatement as a Funeral Service Provider (rev. 4/08).~~

~~Application for Reinstatement of Funeral Service Establishment (eff. 4/08).~~

~~Appendix I: General Price List (rev. 7/07).~~

~~Appendix II: Casket Price List; Outer Burial Container Price List (rev. 7/07).~~

~~Appendix III: Itemized Statement of Funeral Goods and Services Selected (rev. 7/07).~~

Funeral Service Provider Application (rev. 3/10).

Application for Reinstatement as a Funeral Service Provider (rev. 3/10).

Verification of State Licensure Form (rev. 3/10).

Courtesy Card Application (rev. 3/10).

Surface Transportation & Removal Services Application (rev. 5/10).

Crematory Registration Application (rev. 3/10).

Continuing Education Provider Application (rev. 3/10).

Continuing Education Summary Form (rev. 3/10).

Funeral Service Establishment Application (rev. 5/10).

Application for Notification of Establishment Changes (rev. 3/10).

Waiver of Full-Time Manager Application (rev. 3/10).

Application for Reinstatement Funeral Service Establishment (rev. 3/10).

Appendix I. General Price List (rev. 8/10).

Appendix II. Casket Price List, Outer Burial Container Price List (rev. 3/10).

Appendix III. Itemized Statement of Funeral Goods and Services Selected (rev. 3/10).

VA.R. Doc. No. R11-1838; Filed December 21, 2010, 12:57 p.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-80).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2011.

Effective Date: March 3, 2011.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The specific legal authority to promulgate the regulation for provisional licensure of athletic trainers is found in § 54.1-2957.4 of the Code of Virginia.

Purpose: The purpose of the proposed action is to limit the length of time a person can practice athletic training under a provisional license since that person has not demonstrated minimal competency by passage of the examination. The intent of a provisional license was to allow applicants to begin employment between the time they completed school and received the results of the certification examination, and six months is more than sufficient time to complete the examination and become licensed.

While provisional licensees are supposed to practice under close supervision, it has been reported that some are practicing with very little oversight. In addition to the length of time for practice with a provisional license (12 months), the current regulations allow persons who have failed the examination to continue practicing even though they have demonstrated that they are not minimally competent. Because the current regulation for provisional licensure may not adequately protect the athletes (typically young people) who are receiving important care and advice on injuries and training, the board has determined that the regulation should be amended under a fast-track process.

The option of an internship approved by National Athletic Trainers' Association Board of Certification (NATABOC) instead of graduation from an educational program no longer exists and is eliminated to avoid confusion.

Rationale for Using Fast-Track Process: The fast-track process is being used to facilitate the changes as soon as feasible because of concerns in the athletic training profession about provisional licensees continuing to practice after failing the examination, which is an indication that they are not minimally competent.

The advisory board is unanimous in its recommendation for this change, and the limitation of six months on a provisional license is consistent with other professions such as occupational therapy.

Substance: Subsection C of 18VAC85-120-80 on provisional licensure is amended to: (i) eliminate the reference to an internship approved by NATABOC and (ii) change the term of a provisional license for athletic trainers from one year to six months from issuance and to add that the license expires upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

Issues: The advantage to the public is more assurance that persons practicing as athletic trainers and providing athletes (typically young people) with crucial care and advice on injuries and training are minimally competent. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to amend its Regulations Governing the Licensure of Athletic Trainers to eliminate reference to a now defunct internship program, change the time limit for provisional licensure from one year to six months, and specify that individuals who fail their licensure exam while provisionally licensed will lose that license upon notification of their failure.

Result of Analysis. The benefits likely exceed the costs for two of the proposed regulatory changes. There is insufficient information to ascertain whether benefits would likely outweigh costs for an additional amendment of regulatory requirements.

Estimated Economic Impact. Current regulations for licensure of athletic trainers allow individuals who have either graduated from an accredited education program, or who have fulfilled internship educational requirements through the National Athletic Trainers Association Board of Certification (NATABOC), to be provisionally licensed for one year while they are either waiting to take their licensure exam or are waiting for their results. While provisionally licensed, individuals have to work under the supervision of a fully licensed athletic trainer. The Board believes that, despite this supervision requirement, provisionally licensed individuals are working with very little oversight. Specifically, Board staff reports that supervision, in some cases, has consisted of only telephonic contact once a day.

While the Board knows of no specific instances of patients being harmed by loose supervision practices, they believe that the chances of harm occurring will be further minimized by amending these regulations so that provisional licenses will be valid for not more than six months and so that individuals who fail their licensure exams will automatically lose their provisional licenses (upon notification from the testing authority that they have failed). To the extent that licensure in this field helps to ensure safety, clients of athletic trainers will likely benefit from these regulatory changes; particularly from the added provision for individuals who fail their competency exams to automatically lose their provisional licenses. Some small number of individuals who would be

provisionally licensed in the future will likely bear some costs from only being able to keep that license for six months rather that the year that is currently allowed. These costs would likely include job loss for individuals who do not take, and pass, their competency exam within six months of finishing their education. Whether benefits outweigh costs for decreasing the maximum length of provisional licensure will depend on whether the harm that might be caused by people practicing under provisional licensure for an additional six months is greater than the loss of work opportunity for individuals who would lose their provisional license after six months rather than a year. Four of the eight individuals who currently hold a provisional license have had that license for more than six months.

The Board also proposes to eliminate reference currently to the NATABOC internship program that no longer exists. No individual is likely to incur costs from obsolete language being removed from these regulations. This change will benefit anyone who might have been confused by the reference to licensure through a program that is currently not available.

Businesses and Entities Affected. Individuals who are working to attain athletic trainer licensure will be affected by these regulatory changes. The Department of Health Professions (DHP) reports that 119 athletic trainers were newly licensed in 2009 and that there are currently eight individuals who are provisionally licensed as athletic trainers. Four of those eight individuals have been provisionally licensed for longer than six months and would, therefore, be adversely affected if these new regulatory provisions were already in place.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have only a very minimal impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for proposed regulations, 18VAC85-120, relating to changes to provisional licensure.

Summary:

Subsection C of 18VAC85-120-80 on provisional licensure is amended to (i) eliminate the reference to an obsolete internship of the National Athletic Trainers' Association Board of Certification (NATABOC) and (ii) change the term of a provisional license for athletic trainers from one year to six months from issuance and to add that the license expires upon receipt of notification of a failing score on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

18VAC85-120-80. Provisional licensure.

A. An applicant who is a graduate of an accredited education program ~~or has fulfilled internship educational requirements through NATABOC~~ and who has applied to take the certification examination may be granted a provisional license to practice athletic training under the supervision and control of an athletic trainer.

B. The graduate shall submit an application for a provisional license to the board for review and approval by the Chair of the Advisory Board on Athletic Training or his designee.

C. The provisional license shall expire ~~one year~~ six months from issuance or upon receipt of notification of a failing score

on the NATABOC certification examination or upon licensure as an athletic trainer by the board, whichever comes first.

VA.R. Doc. No. R11-2370; Filed December 21, 2010, 12:55 p.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services has claimed an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-80. General Procedures and Information for Licensure (amending 22VAC40-80-160, 22VAC40-80-180, 22VAC40-80-510).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Effective Date: February 16, 2011.

Agency Contact: Karen Cullen, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, or email karen.cullen@dss.virginia.gov.

Summary:

In conformance with Chapter 603 of the 2010 Acts of Assembly, the amendments (i) require applicants and licensees to afford the department's representatives reasonable opportunity to inspect all of the facility's buildings at all times; (ii) set forth conditions under which the applicant or licensee must allow department representatives to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision; and (iii) require at least one unannounced inspection each year of an assisted living facility issued a license or renewal for a one-, two-, or three-year period, and provide for additional inspections as needed based on compliance with applicable laws and regulations. In addition, a Code of Virginia citation is corrected.

22VAC40-80-160. The investigation.

A. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: Subsection A of this section does not apply to child placing agencies or family day systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

B. The department's representative will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

NOTE: See 22VAC40-90, 22VAC40-190 or 22VAC15-50, as applicable.

C. The applicant or licensee shall ~~make available to~~ at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books and records. ~~The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision.~~

EXCEPTION: Section 63.2-1702 of the Code of Virginia provides for an exception in regard to inspection of financial records of child welfare agencies under specified conditions.

D. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision. Interviews with residents, participants, and any person under the facility's or agency's custody, control, direction, or supervision shall be:

1. Authorized by the person to be interviewed or his legally authorized representative; and

2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations for licensure of the facility or agency.

~~D.~~ E. After the on-site inspection the licensing representative will discuss the findings of the investigation with the administrator, licensee or designee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

~~E.~~ F. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (22VAC40-80-230 et seq.) of this chapter Allowable Variances ~~(22VAC40-80-220 et seq.)~~.)

22VAC40-80-180. Determination of continued compliance (renewal and monitoring inspections).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative will make announced and unannounced inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring inspections.

B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

C. ~~All adult care facilities~~ Adult day care centers issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced. ~~All adult care facilities~~ Adult day care centers issued a license for a period of one year shall be inspected at least three times each year, and at least two of those inspections shall be unannounced. ~~All adult care facilities~~ Adult day care centers issued a license for a period of two years shall be inspected at least two times each year, and at least one of those inspections shall be unannounced. ~~All adult care facilities~~ Adult day care centers issued a license for a period of three years shall be inspected at least one time each year, and that ~~visit~~ inspection shall be unannounced.

D. Assisted living facilities issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced.

E. Assisted living facilities issued a license for a period of one, two, or three years shall be:

1. Inspected at least once each year, and that inspection shall be unannounced; and

2. Inspected as needed based on compliance with applicable laws and regulations.

~~D.~~ F. The department's representative may also make such inspections of any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

~~E.~~ G. For any licensed assisted living facility, adult day care center, or child welfare agency, the department may conduct such other announced or unannounced inspections as are considered appropriate.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced inspections made to licensed facilities during the year.

22VAC40-80-510. Recommendations of the hearing officer.

A. By statute, the hearing officer shall recommend findings of fact and a decision upon the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia.). The recommended decision of the hearing officer shall be made upon consideration and review of the record as a whole or such portions of the record as may be cited by any party to the proceedings. The findings of fact shall be based exclusively on admissible evidence or matters that are officially noticed. The recommendation shall be in writing and shall include specific findings on all the major facts in issue.

B. The hearing officer shall provide a recommendation within 90 days from the date the agency record is closed (that is, the date of the final hearing or the date by which the hearing officer prescribes that all evidence shall be submitted) or from a later date if agreed to by the aggrieved party and the agency (§ 2.2-4024 of the Code of Virginia). If the hearing officer does not render a recommended decision within 90 days, the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no recommended decision is made by the hearing officer within 30 days from receipt of the notice, then the Executive Secretary of the Supreme Court, pursuant to § 2.2-4024 of the Code of Virginia, shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause can be shown for the delay.

C. The available remedies offered by the hearing officer shall be to (i) uphold the decision of the department; (ii) recommend reversing the decision; or (iii) recommend

issuance of a different sanction as provided in § ~~63.2-1709 D~~ 63.2-1709.2 B of the Code of Virginia.

D. The findings, conclusions and recommended decision shall be provided to the parties and thereafter either party has 10 days to submit any exceptions in writing to the hearing coordinator for review by the commissioner regarding the recommended decision of the hearing officer. The hearing officer may incorporate the procedure for making exceptions to his recommended decision within the text of his report and recommendation.

E. The hearing officer shall forward the agency record, including the recommendation; all documents submitted by the parties; a listing of all exhibits presented, received and rejected; and the transcript of the hearing to the hearing coordinator.

VA.R. Doc. No. R11-2652; Filed December 22, 2010, 9:19 a.m.

Withdrawal of Proposed Regulations

Titles of Regulations: **22VAC40-120. Minimum Standards for Licensed Family Day-Care Systems (repealing 22VAC40-120-10 through 22VAC40-120-60).**

22VAC40-121. Standards for Licensed Family Day Systems (adding 22VAC40-121-10 through 22VAC40-121-390).

Statutory Authority: §§ 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Notice is hereby given that the State Board of Social Services has WITHDRAWN the proposed regulatory actions for the repeal of 22VAC40-220, Minimum Standards for Licensed Family Day Systems, and promulgation of 22VAC40-221, Standards for Licensed Family Day-Care Systems, that were published in 20:24 VA.R. 2838-2853 August 9, 2004.

Agency Contact: Karin Clark, Department of Social Services, Office of Commissioner, WyteStone Building, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R03-187 and R03-188; Filed December 27, 2010, 11:39 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Fast-Track Regulation

Titles of Regulations: **24VAC5-10. Public Participation Guidelines for the Enactment of Regulations (repealing 24VAC5-10-10 through 24VAC5-10-30).**

24VAC5-11. Public Participation Guidelines (adding 24VAC5-11-10 through 24VAC5-11-110).

Statutory Authority: §§ 2.2-4007.02 and 5.1-2.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2011.

Effective Date: March 3, 2011.

Agency Contact: Keith F. McCrea, Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3630, FAX (804) 236-3635, or email keith.mccrae@doav.virginia.gov.

Basis: Section 2.2-4007.2 of the Code of Virginia requires agencies to adopt public participation guidelines to use in soliciting input from interested parties in the development of regulations. Section 5.1-2.2 of the Code of Virginia provides that the Virginia Aviation Board shall promulgate such rules and regulations that affect airports, landing fields, and other aviation facilities; aircraft; air traffic; construction and inspection of aircraft; qualifications and licensing of airmen; stunt flying; and other such kindred matters and things as may be proper and necessary to promote and develop safe aviation practices and operations.

Purpose: This action is taken pursuant to Chapter 321 of the 2008 Acts of Assembly, which requires every rulemaking body in the Commonwealth to adopt the model public participation guidelines. The Virginia Aviation Board and Department of Aviation have no discretion in this matter.

Rationale for Using Fast-Track Process: This action is taken to comply with the requirement mandated by the Virginia General Assembly (Chapter 321 of the 2008 Acts of Assembly) and, therefore, is not expected to create any controversy.

Substance: This action repeals the entire chapter, 24VAC5-10, Public Participation Guidelines, and replaces it with a new chapter, 24VAC5-11, Public Participation Guidelines, as required by Chapter 321 of the 2008 Acts of Assembly. The new chapter has all provisions of the model public participation guidelines developed by the Department of Planning and Budget.

Issues: The model public participation guidelines being incorporated into the Virginia Aviation Regulations are advantageous to the public by providing a consistency for public participation requirements for all Virginia agencies involved in the rulemaking process. No disadvantages are anticipated for the public, the Virginia Aviation Board, the Department of Aviation, or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Department of Aviation (DOAV) proposes to adopt

model public participation guidelines as mandated in Chapter 321 of the 2008 Acts of Assembly.

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

Estimated Economic Impact. Pursuant to Chapter 321 of the 2008 Acts of Assembly, the Department of Planning and Budget, in consultation with the Office of the Attorney General, (i) developed model public participation guidelines (PPGs) and (ii) provided these model PPGs to each agency that has the authority to promulgate regulations. Chapter 321 required that, by December 1, 2008, state agencies either (a) adopt these model public participation guidelines as an exempt action or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to Code of Virginia section § 2.2-4012.1. Pursuant to Chapter 321, model PPGs promulgated by agencies after January 1, 2009 are subject to the normal requirements of the Administrative Process Act. Because of this mandate, DOAV now proposes to promulgate the model PPGs as a fast track action.

The purposes of the model PPG legislation are threefold: first, to ensure that each agency or board has a current set of PPGs in place.[1] Second, to ensure that each agency or board's PPGs incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists. Last, but perhaps most importantly, to have uniform guidelines in place to facilitate citizen participation in rulemaking and to make those guidelines consistent, to the extent possible, among all executive branch boards and agencies. For all of these reasons, citizens who are interested in participating in the DOAV rulemaking process will benefit from the promulgation of these PPGs.

Businesses and Entities Affected. There are 66 licensed public-use airport sponsors, 189 private-use airport owners, and 2,595 aircraft licenses issued in Virginia. These proposed amendments to the DOAV's public participation guidelines potentially affect all citizens and entities in the Commonwealth who has an interest in these regulations.

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

Projected Impact on Employment. The proposal amendments do not directly affect employment.

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

Small Businesses: Costs and Other Effects. The proposed amendments do not directly affect small businesses.

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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[1] Some agencies and boards have not updated their PPGs since the mid-late 1980's.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Aviation (DOAV) is promulgating new Public Participation Guidelines (PPG) to satisfy requirements mandated by Chapter 321 of the 2008 Acts of the Assembly. The reference for these proposed new guidelines is 24VAC5-11. The guidelines proposed by DOAV utilize the model PPGs developed by The Virginia Department of Planning and Budget (DPB).

DPB has conducted an Economic Impact Analysis (EIA) for the proposed PPGs being promulgated by DOAV. The EIA analyzed a number of issues, with attention paid to any affect on localities, businesses, employment, real estate, and others. The EIA concluded no adverse impacts should be experienced by stakeholders as the result of enactment of the proposed PPGs.

DOAV concurs with the EIA prepared by DPB, and as such submits this statement as part of the written record.

Summary:

The regulations repeal existing regulations on regulation development and public participation and incorporate the model public participation guidelines developed by the Department of Planning and Budget pursuant to Chapter 321 of the 2008 Acts of Assembly. Highlights of the model public participation guidelines include the addition of negotiated rulemaking panels and regulatory advisory panels and instructions for notification.

CHAPTER 11
PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

24VAC5-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Virginia Aviation Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

24VAC5-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Virginia Aviation Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending, or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, that has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, that is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II
Notification of Interested Persons

24VAC5-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be

deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

24VAC5-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 24VAC5-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a reproposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III
Public Participation Procedures

24VAC5-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

24VAC5-11-60. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider, and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

24VAC5-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

24VAC5-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

24VAC5-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

24VAC5-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

24VAC5-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R11-1508; Filed December 17, 2010, 3:14 p.m.

COMMONWEALTH TRANSPORTATION BOARD

Fast-Track Regulation

Titles of Regulations: **24VAC30-20. General Rules and Regulations of the Commonwealth Transportation Board (repealing 24VAC30-20-10 through 24VAC30-20-180).**

24VAC30-21. General Rules and Regulations of the Commonwealth Transportation Board (adding 24VAC30-21-10 through 24VAC30-21-60).

Statutory Authority: § 33.1-12 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2011.

Effective Date: March 3, 2011.

Agency Contact: Robert H. Hofrichter, Assistant Director for Land Use, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, FAX (804) 786-0628, or email robert.hofrichter@vdot.virginia.gov.

Basis: Section 33.1-12 of the Code of Virginia confers upon the Commonwealth Transportation Board (CTB) broad general authority at its discretion to promulgate regulations affecting transportation on the state highway system within the current framework of state statutes.

Purpose: The CTB, Virginia Department of Transportation (VDOT), and the Commissioner of VDOT have all been involved in promulgating or amending a variety of regulations concerning land use and regulation of entrances in recent years. In particular, major initiatives mandated by the General Assembly have affected the content of the existing General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-20) (General Rules).

Chapters 863 and 928 of the 2007 Acts of Assembly amended §§ 33.1-13, 33.1-198, and 33.1-199 of the Code of Virginia, and added § 33.1-198.1 to the Code of Virginia. The legislation requires the commissioner to develop comprehensive highway access management regulations and standards to preserve and improve the efficient operations of the state systems of highways. The regulations and design standards are used to manage the location, number, and spacing and design of entrances and intersections, including median openings, turn lanes, traffic signals, and interchanges on the systems of state highways.

Two bills were introduced in the 2008 Session of the General Assembly that addressed VDOTs promulgation of these access management regulations. Chapters 274 and 454 (2008) amended the enactment clauses of Chapters 863 and 928 of the 2007 Acts of Assembly to provide for the access management regulations to be promulgated in phases. The first phase resulting in the promulgation of Access Management Regulations: Principal Arterials (24VAC30-72), effective July 1, 2008, was exempted from the requirements of the Administrative Process Act (APA). The subsequent phase resulting in the promulgation of Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73), effective October 14, 2009, was subject to the APA.

Promulgation of the two phases of the access management standards affect the content of the new Land Use Permit Regulations (LUPR), intended to replace the existing Land Use Permit Manual (LUPM), and the Minimum Standards of Entrances to State Highways (24VAC30-71) (Minimum Standards), both of which address in detail the regulation of entrances. An entire part of the LUPM and all of the Minimum Standards have become obsolete. Because the existing General Rules reference the LUPM and the Minimum Standards, an amendment (or replacement) of that regulation is necessary. Based on the fundamental changes to how land use and entrances are to be regulated, and the fact that the existing General Rules have been virtually unchanged since 1974, VDOT believes it is necessary to update the provisions of the General Rules to reflect these changes. Furthermore, due to comprehensive extent and nature of the changes, VDOT believes it is appropriate to repeal the existing General Rules and promulgate a new regulation.

The regulation sets forth the rules under which work of any nature may be performed on any property under the ownership, control, or jurisdiction of the CTB or VDOT. These rules are intended to protect the health, safety, and welfare not only of those performing the work but also of the traveling public in general. Without provisions governing work performed on CTB or VDOT property, health, safety, and welfare may be at risk. This action in particular updates statutory references and removes duplicative provisions to ensure a clear, defensible regulation.

Rationale for Using Fast-Track Process: The Access Management Regulations: Minor Arterials, Collectors, and Local Streets have been promulgated in accordance with the requirements of the APA. Repeal of the LUPM and promulgation of the LUPR have been approved by the CTB, and these actions are being implemented in accordance with the APA, including the provisions of Article 2, which mandate the Executive Branch review process. As part of the regulatory process, VDOT has provided for public comment and public discussion of significant issues relating to the subjects of land use, regulation of entrances, and access management. Because these issues and public concerns have already been addressed, VDOT does not believe that the repeal of the existing regulations in 24VAC30-20 and the promulgation of the new regulations in 24VAC30-21 will be controversial.

Substance: The new regulations retain the same overall framework of the existing regulations, but have updated material on the permit process and regulation of entrances and exclude material addressed in greater detail in other regulations, such as penalties for violations.

Issues: The public will benefit from having obsolete or redundant provisions removed from the new regulation because the chance of confusion will be minimized. There are no disadvantages to the public when regulations are clear, accurate, and up to date.

The Commonwealth will also benefit from having obsolete or redundant provisions removed from the new regulation because the regulatory text will be concise and more clearly understood. There are no disadvantages to the Commonwealth when regulations are clear, accurate, and up to date.

The regulated community will find that the relationship between the new General Rules and related regulations has not changed: overall policy is addressed in the new General Rules, just as in the existing General Rules, but specific regulatory provisions concerning land use and access to CTB-controlled rights-of-way are addressed in dedicated regulations, where more detail can be provided. The only difference is that the new General Rules have been updated and streamlined to remove obsolete and redundant provisions.

VDOT believes there are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commonwealth Transportation Board (Board) proposes to repeal 24VAC30-20 and replace it with 24VAC30-21, keeping the title General Rules and Regulations of the Commonwealth Transportation Board. Through this action the Board proposes to: 1) update statutory and administrative law references, 2) eliminate provisions that are duplicative of provisions in other regulations or are obsolete, and 3) update definitions.

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

Estimated Economic Impact. The proposed updating of statutory and administrative law references and definitions, as well as the elimination of provisions that are duplicative of provisions in other regulations or are obsolete, will be beneficial for the public. Clarity of the law will be improved and citizens may need to spend less time understanding the law, and may be less likely to misunderstand requirements.

Businesses and Entities Affected. The proposed amendments potentially affect individuals, businesses, and other entities performing work or participating in permitted activities on state-owned property controlled by the Board. According to the Virginia Department of Transportation, in Fiscal Year 2009 there were 1,813 private entrance permits, 729 commercial entrance permits, 7,063 utility permits, and 1,547 other permits issued.

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

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Transportation concurs with the economic impact analysis prepared by the Department of Planning and Budget concerning the repeal of 24VAC30-20 and promulgation of 24VAC30-21 under the same title (General Rules and Regulations of the Commonwealth Transportation Board).

Summary:

This fast-track action repeals an existing regulation, General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-20) and replaces it with a new regulation of the same title but a different Virginia Administrative Code number, 24VAC30-21. The existing regulations were promulgated to set forth the conditions under which the Virginia Department of Transportation (VDOT), on behalf of the Commonwealth Transportation Board (CTB), will grant permits for performing work on state-owned property controlled by the CTB. The existing regulation also specifies permitted and prohibited activities on state-owned rights of way.

The new regulations update statutory and administrative code references, eliminate provisions that are duplicative of provisions in other regulations or are obsolete, and update definitions.

CHAPTER 21
GENERAL RULES AND REGULATIONS OF THE COMMONWEALTH TRANSPORTATION BOARD

24VAC30-21-10. Definitions.

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

"Board" means the Commonwealth Transportation Board.

"Commissioner" means the Commonwealth Transportation Commissioner, the individual who serves as the chief executive officer of the Virginia Department of Transportation (VDOT) or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Right of way" means that property within the entire area of every way or place of whatever nature within the system of state highways under the ownership, control, or jurisdiction of the board or VDOT that is open or is to be opened within the future for the use of the public for purposes of travel in the Commonwealth. The area set out above includes not only the traveled portion but the entire area within and without the traveled portion, from boundary line to boundary line, and also all parking and recreation areas that are under the ownership, control, or jurisdiction of the board or VDOT.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of the board including, but not limited to, the primary, secondary, and interstate systems.

"VDOT" means the Virginia Department of Transportation, the Commonwealth Transportation Commissioner, or a designee.

24VAC30-21-20. General provisions concerning permits.

A. No work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of the board or VDOT including, but not limited to, the right of way of any highway in the system of state highways until written permission is first obtained from VDOT. Written permission under this section is granted by way of permit. In addition, the letting of a contract by and between VDOT and any other party grants to that party automatically such permission for the area under contract, unless otherwise stated in the contract. VDOT is authorized to establish specific requirements for such permits including, but not limited to, permit authority, application procedure, and conditions under which a permit may be denied or revoked.

B. No land use permit shall be issued until the applicant has complied with the conditions set forth in and pursuant to applicable VDOT regulations filed as part of the Virginia Administrative Code.

C. Applicants to whom permits are issued shall at all times indemnify and save harmless the board, members of the board, the Commonwealth, and all Commonwealth employees, agents, and officers from responsibility, damage, or liability arising from the exercise of the privileges granted by these permits.

D. Any structure placed upon or within the right of way pursuant to a permit issued by VDOT shall be relocated or removed whenever ordered by VDOT. Such relocation or removal shall be accomplished at no expense to the Commonwealth unless VDOT agrees or has agreed otherwise.

24VAC30-21-30. General provisions concerning use of right of way.

A. No person, firm, or corporation shall use or occupy the right of way of any highway for any purpose except travel, except as may be authorized by VDOT, either pursuant to regulation or as provided by law.

B. Except as permitted by subdivision 2 of this subsection, the following restrictions apply to activities occurring on bridges forming a part of the system of state highways:

1. No person, firm, or corporation shall stand or park a vehicle of any description on any bridge unless authorized by VDOT.

2. No person shall fish or seine from any bridge except when facilities are provided for such purposes as set out in § 33.1-207 of the Code of Virginia.

3. No person, firm, or corporation shall use any bridge as a wharf from which to load or unload any vehicle, as a place of deposit for any property, or for any other purpose except crossing.

4. No master or owner of any vessel shall make it fast to or lay it alongside such bridge.

5. Provisions of this subsection shall not apply to highway maintenance vehicles or vessels.

C. No person, firm, or corporation shall, without the consent of VDOT, remove, injure, destroy, break, deface, or in any way tamper with any property, real or personal, that is growing or has been placed on the right of way of any highway within the system of state highways by or with the consent of VDOT.

D. No person, firm, or corporation may cause water to flow from any source upon the right of way of any highway within the system of state highways, nor shall any person, firm, or corporation cause any increase of the water, at present,

lawfully on the right of way of any highway or concentrate the flow of water upon the right of way of any highway in the system of state highways without the written consent of VDOT.

E. No road, railroad, or tracks of any description shall be laid along, upon, or across any portion of a highway in the system of state highways without the written consent of VDOT.

24VAC30-21-40. Board authority to regulate entrances from adjacent property to right of way of highways within the state highway system.

The board, under subdivision 3 of § 33.1-12 of the Code of Virginia, reserves the power to regulate entrances from adjacent property upon the right of way of any highway within the system of state highways. No entrance of any nature shall be made, built, or constructed upon the right of way of any highway within the system of state highways until the location has been determined in the opinion of the commissioner or designee of VDOT to be acceptable from a public safety standpoint and, further, until approval has been granted by VDOT. The design and construction of such entrances as approved by the commissioner pursuant to §§ 33.1-198 and 33.1-198.1 of the Code of Virginia must comply with VDOT's regulations where applicable.

24VAC30-21-50. Placement of airport or heliport facilities.

No airport runways, heliports, or similar facilities either private or commercial, shall be placed adjacent to highway rights of way in such a manner as to impede the safe flow of vehicular traffic. Runways or similar facilities shall be placed a proper distance to allow a minimum glide slope for aircraft of 3 approaching said runway, or at a height over the roadway of 30 feet, whichever is greater. All airports or heliports, or both, proposed in the vicinity of highway rights of way shall take these minimum road clearances into consideration when planning the location of the end of their runways.

24VAC30-21-60. Use of electronic means for submitting documents or payments.

Where practicable, VDOT shall allow the alternative of submitting any documents or payments by electronic means.

VA.R. Doc. No. R11-2183; Filed December 28, 2010, 10:37 a.m.

Fast-Track Regulation

Title of Regulation: **24VAC30-71. Minimum Standards of Entrances to State Highways (repealing 24VAC30-71-10 through 24VAC30-71-170).**

Statutory Authority: § 33.1-12 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2011.

Effective Date: March 3, 2011.

Agency Contact: Paul Grasewicz, AICP, Access Management Program Administrator, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0778, FAX (804) 786-0628, or email paul.grasewicz@vdot.virginia.gov.

Basis: Section 33.1-12 of the Code of Virginia authorizes the Commonwealth Transportation Board to make rules and regulations for the protection of and covering traffic on and the use of systems of state highways.

Sections 33.1-197 and 33.1-198 of the Code of Virginia authorize the Commonwealth Transportation Commissioner to permit connections over shoulders of highways for intersecting private roads and intersection commercial establishment entrances to provide the users of such private roads and entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways.

Purpose: Chapters 863 and 928 of the 2007 Acts of Assembly require the Commonwealth Transportation Commissioner to develop comprehensive highway access management regulations and standards. In response to this directive, the Access Management Regulations: Principal Arterials (24VAC30-72) (Principal Arterials) went into effect July 1, 2008, and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73) (Minor Arterials), went into effect October 14, 2009. These regulations and standards supersede the requirements set forth in the Minimum Standards. Therefore, this regulation is being repealed because access management regulations mandated by the General Assembly have made it obsolete. The goal of the repeal is to remove outdated regulations from the Virginia Administrative Code, as well as prevent possible misapplication of the Minimum Standards to the regulation of entrances. It is potentially harmful to the safety of the motorist in particular and the public welfare in general to have obsolete regulations retained in the Virginia Administrative Code.

Rationale for Using Fast-Track Process: Implementation of the Principal Arterials regulations and the Minor Arterials regulations makes the provisions of the Minimum Standards obsolete, as these two Access Management Regulations contain more detail to address goals mandated by the General Assembly. Should there be any conflict among the two Access Management Regulations and the Minimum Standards, the Minimum Standards would not apply. Therefore, VDOT expects repeal of this regulation will not be controversial.

Substance: Although many parts of this regulation have been carried over to the Principal Arterials regulations and the Minor Arterials regulations, in general, the replacement regulations include the following substantive changes:

• Revised list of definitions more relevant to access management (shared entrance, functional classification).

• Additional information on authority to regulate entrances to highways.

• Information on the application of the regulation to principal arterials, minor arterials, collectors, and local streets, and the availability of maps to facilitate identification of highways by their functional classification.

• Revised administrative procedures and rules for obtaining commercial and private entrance permits consistent with the authority granted to district administrator's designees.

• Revised appeal and sight distance exception procedures to include a deadline for VDOT's written response to the request.

• Revised general provisions governing commercial and private entrances consistent with statutory authority and requirements concerning access management.

• Revised details on commercial entrance design to provide more detailed instructions for new items such as bicycle/pedestrian features and traffic impact analyses. Also included is information on existing commercial entrances, such as criteria under which VDOT may require the reconstruction, upgrading, or relocation of a commercial entrance due to unsafe condition, change in use, or its being unserviceable. This information was supplied in the Minimum Standards (24VAC30-71), but the content has been revised. For example, a graphic depiction of maintenance responsibilities of VDOT and owners of private and commercial entrances has been transferred from the Minimum Standards (24VAC30-71) to the Road Design Manual and more guidance is provided on criteria to be used to determine the condition of the entrance or the change in use of the entrance due to an increase in the volume or type of traffic using the entrance.

• Revised details on minimum sight distance for commercial entrances will now be located in the Road Design Manual. Sight distance standards were not changed.

• Revised details on private entrances require the property owner to arrange for the installation of the private entrance drainage pipe. This change is not anticipated to cause any inconvenience, since property owners will already need to engage the services of a contractor to perform grading and other work associated with the pipe installation, and this part of the job can be performed with the other work. In addition, the property owner can request VDOT to install the entrance drainage pipe at the property owner's expense. VDOT may choose to install the drainage pipe and bill the property owner for the cost.

• Information on requirements for coordination with local governments was not explicitly addressed in existing regulations, and is included to provide more instruction to users of the regulations.

Issues: The public will benefit from repeal of this obsolete regulation because the possibility of confusion over applicable standards for entrances will be eliminated. The Access Management Regulations, along with the replacement Land Use Permit Regulations, will be the operative regulatory guidance for access management specifically and the permitting process in general. Even though both access management regulations state that conflicts between those chapters and the Minimum Standards shall be resolved in favor of the access management regulations provisions, continued existence of the regulation might lead to the mistaken conclusion among the public that they are still applicable.

VDOT and the Commonwealth will benefit from repeal of the obsolete regulation for reasons similar to the benefits to the public; removal of obsolete regulations from the Virginia Administrative Code will eliminate the possibility of confusion over applicable standards.

VDOT believes there are no disadvantages to the public or the Commonwealth from this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 863 and 928 of the 2007 Acts of Assembly, the Commonwealth Transportation Board (Board) has developed implemented and comprehensive highway access management regulations. The Access Management Regulations: Principal Arterials (24VAC30-72) took effect on July 1, 2008 and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73) took effect October 14, 2009. The promulgation of these two regulations has consequently made the Minimum Standards of Entrances to State Highways regulation (24VAC30-71) obsolete. Accordingly, the Board proposes to repeal this regulation as it is superseded by the other two regulations.

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

Estimated Economic Impact. The Minimum Standards of Entrances to State Highways do not contain any significant provisions that are not also in other regulations. Thus there is no cost to repealing these regulations. There may be a small benefit to repealing in that some confusion may be avoided. Individuals who read these regulations may not know to look for additional relevant rules in the new comprehensive highway access regulations. Once these regulations are repealed that potential for confusion will be eliminated.

Businesses and Entities Affected. The proposed amendments potentially affect individuals and firms who apply for entrance permits and construct entrances connecting their businesses, residences, or subdivisions to a highway.

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

Projected Impact on Employment. The proposal amendments will not affect employment.

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

Small Businesses: Costs and Other Effects. The proposed amendments will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not significantly affect small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Transportation concurs with the economic impact analysis prepared by the Department of Planning and Budget concerning the repeal of the Minimum Standards of Entrances to State Highways (24VAC30-71).

Summary:

This action repeals the current regulations regarding commercial entrances connecting to state-owned highways because other regulations mandated by the General Assembly, such as the Access Management Regulations (24VAC30-72 and 24VAC 30-73) and the Land Use Permit Regulations (24VAC30-151) make it obsolete.

VA.R. Doc. No. R11-2172; Filed December 28, 2010, 10:36 a.m.

EXECUTIVE ORDER NUMBER 28 (2010)

The Commonwealth's Gang and Violent Crime Executive Committee

Importance of the Issue

Information from law enforcement agencies indicates that gang activity and crime, once a problem reserved for large cities, has spread outward as gang members migrate from urban areas to suburban and rural communities, threatening the safety of Virginians everywhere. The Virginia Fusion Center reports the presence of criminal street gangs throughout Northern Virginia, the Greater Richmond Area, Western Virginia, Hampton Roads and in far Southwest Virginia. Offshoots of National gangs such as the Bloods, Crips and Gangster Disciples are active throughout the Commonwealth. In order to make Virginia a safer place to raise a family and own or operate a business, it is essential that federal, state and local governments work together to address and reduce gangs and gang-related violence in the Commonwealth.

By combating gangs we impact other criminal activities including drug distribution, illegal firearms possession, assault, murder and a host of other crimes. Strong anti-gang education and prevention efforts designed to reduce gang membership; and programs for individuals who want to renounce gang life, are all essential to addressing criminal street gangs and gang related violence.

Accordingly, the Commonwealth must work collaboratively along with local and federal partners, businesses, as well as community and faith-based organizations, in establishing best practices for combating gangs and reducing gang-related crime.

The Commonwealth's Gang and Violent Crime Executive Committee

Many localities have taken steps to address the gang problem within their communities; however, additional resources are needed to aid local governments in their fight against gangs and gang related violence.

By virtue of the authority vested in me as Governor, under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Commonwealth's Gang and Violent Crime Executive Committee.

The Commonwealth's Gang and Violent Crime Executive Committee (the "Committee") shall be chaired by the Secretary of Public Safety or her designee. The Committee shall be comprised of representatives of the following agencies and organizations:

- The Commonwealth's Attorneys' Services Council
- The Department of Correctional Education
- The Department of Corrections – Institutions
- The Department of Corrections – Community Corrections
- The Department of Criminal Justice Services
- The Department of Education
- The Department of Health
- The Department of Housing and Community Development
- The Department of Juvenile Justice
- The Department of Behavioral Health and Developmental Services
- The Department of Social Services
- The Department of State Police
- The Governor's Office for Substance Abuse Prevention
- The Office of the Attorney General
- The Department of Alcohol Beverage Control
- The Office of the Executive Secretary of the Supreme Court
- The Governor's Prisoner Re-Entry Coordinator
- The Virginia Regional Jail Association
- The Virginia Sheriff's Association
- The Virginia Association of Chiefs of Police
- The Virginia Association of Commonwealth's Attorneys

The Governor may appoint additional members as appropriate. Further, the Secretary of Public Safety may invite additional participation as needed. All Executive Branch agencies of the Commonwealth, upon request, shall participate in activities of the Committee. Support staff will be provided by the Office of the Secretary of Public Safety, the Department of State Police and other agencies as the Secretary of Public Safety may designate.

The Executive Committee shall:

- Develop and expand partnerships within all levels of federal, state and local government to best utilize resources to impact gang crime in the Commonwealth;

- Work with the Prisoner Re-entry Coordinator and the Virginia Prisoner and Juvenile Offender Re-entry Council in establishing strategies for successful reentry of gang members;
- Engage local agencies, community based social service providers, community organizations, faith-based organizations, as well as other stakeholders, in promoting evidence based programs like Richmond's successful and nationally recognized Gang Reduction and Intervention Program (GRIP);
- Coordinate the dissemination of gang-awareness information to citizens of the Commonwealth in order to increase their involvement in making local communities safe and fostering local opportunities for youth;
- Expand discussions and anti-gang planning to include trends and patterns of related violent crime in the Commonwealth;
- Provide the Governor, by December 1, 2011, a report that includes an analysis of state agencies anti-gang efforts, and the status of the State Police Anti-Gang Task Forces. The report should also include recommendations regarding strategic advancement of gang investigations and the development of gang intelligence as well as recommendations for educational, prevention, and re-entry strategies. Finally, the report should include best practices and anti-gang initiatives throughout the Commonwealth.

The Secretary of Public Safety, working with the Committee, shall develop a long-term strategic plan for reducing gang activity and gang violence in the Commonwealth. The plan shall identify methods of improving communication; a strategy for sharing of information; and ways of strengthening collaboration between state and local agencies. Such a plan shall be submitted to the Governor no later than December 1, 2011.

The Committee shall submit to the Governor its findings and recommendations on matters potentially impacting the development of the Executive Budget no later than September 15, 2011. The Committee shall submit a final report of its activities, findings and recommendations no later than October 1, 2011. Should the Committee be extended beyond a year, this pattern of reporting shall continue for the duration of the Committee.

Necessary funding to support the Executive Committee and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Committee, as authorized by Section 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Executive Committee are $5,000.00 per year. An estimated 200 hours of staff time will be required to support the work of the Executive Committee.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect for one year from its signing, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 16th day of December, 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 29 (2010)

Serving Virginia's Veterans

Importance of Veterans Services

Over 820,000 military veterans and their families call Virginia home. The Commonwealth has a special responsibility to support these men and women, as well as the 245,000 active duty service members, reservists, and National Guard members from Virginia. These brave men and women leave safe homes and pleasant lives to defend and advance this nation and the Commonwealth. They have courageously combated tyranny and oppression to bring freedom to others. Our nation and our Commonwealth owe these men and women a tremendous debt of gratitude.

In 1789, George Washington said "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of early wars were treated and appreciated by our nation." These sentiments apply as strongly today as they did at the founding of our nation. There is no greater obligation of a nation than to support the military, veterans, and their families and to honor those who have made the ultimate sacrifice.

Directives for Serving Virginia's Veterans

By virtue of the authority vested in me as Governor by Article V of the Constitution of Virginia and under the laws of the Commonwealth, including, but not limited to, Section 2.2-103 of the Code of Virginia, and in conjunction with Executive Order Number 10, Housing Policy Framework of the Commonwealth of Virginia, in regard to addressing homelessness to include veterans, I hereby set forth the policy of the Executive Branch for improving services to Virginia's veterans, with the goal of making Virginia our nation's most veteran-friendly state.

- I hereby direct all state agencies to identify new, expanded, or customized services that meet the educational, health care, and social services needs of Virginia's veterans. Agencies will work with the

Department of Veterans Services to identify the resources required to implement the new, expanded, or customized services and will report such requirements to the Commissioner of Veterans Services no later than April 30, 2011, and on April 30 of each subsequent year this Executive Order is effective.

- I hereby direct the Board of Veterans Services and the Joint Leadership Council of Veterans Service Organizations to develop legislation to be considered by the Governor for introduction in the 2012 and subsequent General Assemblies. Such proposals shall be submitted, via the Commissioner of the Department of Veterans Services, to the Governor's Office no later than August 15, 2011, and by August 15 of each subsequent year this Executive Order is effective.
- I hereby direct the Commissioner of the Department of Veterans Services and the Veterans Services Foundation to continue to give high priority to obtaining federal grants, private contributions, alternate dedicated revenue sources, and other resources for improving services to veterans in Virginia.
- I hereby direct the Department of Veterans Services to continue the development of the Automated Claims Processing System.
- I hereby direct the Department of Human Resource Management to ensure that all state agencies are aware of, and comply with, the Veterans Hiring Preference in State Government. I also hereby direct all state agency heads to renew their commitment to veterans' preference in hiring.
- I hereby request that the Lieutenant Governor of Virginia, in his capacity as Virginia's Chief Jobs Creation Officer, along with a representative of the Secretary of Commerce and Trade, to partner with the Department of Veterans Services, the Virginia Employment Commission, and the Virginia Community College System to conduct research to identify the demographics and other characteristics of veterans at risk for unemployment, to review veterans employment trends for the Commonwealth, and to determine whether veterans are being sufficiently employed in growth sectors and jobs in high demand.
- I hereby direct the Department of Veterans Services, Department of Human Resource Management, the Department of Rehabilitative Services, the Virginia Employment Commission, and the Virginia Community College System to identify the resources necessary to create, under the Department of Veterans Services, a program to develop employment opportunities for veterans. The program shall include a focus on developing entrepreneurial opportunities for veterans, particularly those with disabilities.
- I hereby direct the Department of Rail and Public Transportation, in conjunction with the Department of Veterans Services, to work with local agencies to identify transportation services for veterans that could supplement the transportation routes and schedules already provided by the U.S. Department of Veterans Affairs and the Disabled American Veterans. Any new transportation programs created should endeavor to employ veterans for these services.
- I hereby direct all state agencies to work with the Department of Veterans Services and the Virginia Wounded Warrior Program to ensure continued commitment to serving the needs of veterans and their families affected by combat stress and traumatic brain injuries.

Effective Date of the Executive Order

This Executive Order shall be in effect upon its signing and shall remain in full force and effect until June 30, 2014, unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia, this 23rd day of December, 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 30 (2010)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to the Threat of Significant Snow Accumulations, Transportation Difficulties, and Power Outages Caused by a Winter Storm

Importance of the Issue

On December 25, 2010, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on National Weather Service forecasts projecting a winter storm with significant snow accumulations that could cause transportation difficulties and power outages throughout the Commonwealth.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on December 25, 2010, whereby I proclaimed that a state of emergency exists and I directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, to alleviate any conditions resulting from significant storm events, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. The activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of potential affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP), and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles in route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of a maximum of $100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, in performing these missions shall be paid from state funds and/or federal funds. In addition, up to $100,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

K. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Citizen Emergency Response Teams (CERTS), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) and (F) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

L. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill sitting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

M. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials.

N. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall

make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this event and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

(a) Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

(b) Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

(c) All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

(d) In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective December 25, 2010, and shall remain in full force and effect until June 30, 2011, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 28th day of December 2010.

/s/ Robert F. McDonnell
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Bacteria TMDL Modification of James River and Tributaries – Lower Piedmont Region in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties, Virginia

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on seven proposed minor modifications of the total maximum daily loads (TMDLs) developed for the impaired segments: Beaverdam Creek (H38R-03), Fine Creek (H38R-01), and the James River (H33R-01 and H38R-04).

A total maximum daily load of E. coli was developed to address the bacterial impairments in the waterways and counties mentioned above. This TMDL was approved by the Environmental Protection Agency on June 11, 2008. The report is available at: http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmsgrp2.pdf. DEQ seeks written comments from interested persons on seven minor modifications of this TMDL. Two modifications are proposed for Beaverdam Creek. The first is to remove Huguenot Academy (VA0063037) that should not have been given a waste load allocation (WLA) in Beaverdam Creek because it discharges to Fine Creek. The WLA of 6.96E+09 colony forming units per year (cfu/yr) based on a maximum discharge of 0.004 million gallons per day (MGD) will be added to the "future growth" for Beaverdam Creek. The second is to add a new discharger, Oilville Waste Water Treatment Plant (WWTP) (VA0092428), which is a municipal facility with a maximum discharge of 0.3 MGD and a WLA of 5.22E+11 (cfu/yr). The revised future growth in Beaverdam Creek as a result of this modification will be 1.58E+12 (cfu/yr). The proposed changes for the Beaverdam Creek TMDL are equal to < 1.0%.

One modification is proposed for Fine Creek, which is to add discharger Huguenot Academy (VA0063037), originally allocated to Beaverdam Creek by mistake. A WLA of 6.96E+09 (cfu/yr) will be assigned to the discharger from "future growth." The revised future growth in Fine Creek as a result of this modification will be 2.96E+10 (cfu/yr). The proposed changes for the Fine Creek TMDL are equal to < 1.0%.

Two modifications are proposed for the upper James River (H33R-01) segment in order to include two domestic sewage discharges (VAG404276 and VAG404277) with a maximum discharge of 0.001 MGD each. These dischargers were not assigned WLAs in the TMDL. A WLA of 1.74E+09 (cfu/yr) will be assigned to each discharger from "future growth." The revised future growth in the upper James River as a result of these modifications will be 2.79E+11 (cfu/yr). The revised total WLA in the upper James River as a result of these modifications will be 3.49E+11 (cfu/yr). The proposed changes for the upper James River (H33R-01) TMDL are equal to <1.0%.

Two modifications are proposed for the lower James River (H38R-04) segment in order to include two domestic sewage discharges (VAG404276 and VAG404277) with a maximum discharge of 0.001 MGD each. These dischargers were not assigned WLAs in the TMDL. A WLA of 1.74E+09 (cfu/yr) will be assigned to each discharger from "future growth." The revised future growth in the lower James River as a result of this modification will be 6.54E+12. The proposed changes for the lower James River (H38R-04) TMDL are equal to <1.0%.

The proposed WLA changes above will neither cause nor contribute to the nonattainment of the James River basin. The public comment period for these modifications will end on February 16, 2011. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, by email at margaret.smigo@deq.virginia.gov, or by FAX at (804) 527-5106. Following the comment period, a modification letter and any comments received will be sent to EPA for final approval.

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in DEQ's annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submittal of their requests. All nominations must be received by April 30, 2011, to be considered for the 2012 calendar year. Copies of the guidance document and nomination form are available online at http://www.deq.virginia.gov/cmonitor/.

Contact Information: Stuart Torbeck, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, or email charles.torbeck@deq.virginia.gov.

Notice of Public Comment Period for Revised No Discharge Zone Application for Farnham Creek in Richmond County and Lancaster Creek in Richmond and Lancaster Counties

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing its intent to apply to the U.S. Environmental Protection Agency (EPA) to designate a

federal No Discharge Zone and is seeking public comment on the revised draft application.

Previous meeting and comment period: A public meeting to solicit public comment for the designation of Farnham Creek and Lancaster Creek as federal No Discharge Zones (NDZs) was held on October 5, 2010. Public comments from stakeholders and EPA were received and used to revise the draft application that is now presented for public review. A NDZ designation bans the overboard discharge of human sewage, either treated or untreated, in these creeks. The NDZ does not, however, apply to greywater boat discharges.

Description of study: House Bill 1774 (2009 Session of the General Assembly) resolves that all tidal creeks in Virginia be designated federal No Discharge Zones, and directs the DEQ to pursue this designation. It is currently illegal to discharge raw sewage in U.S. territorial waters. In a NDZ, this ban is expanded to include sewage treated by on-board marine sanitation devices. This designation is determined by EPA upon application from the states, and is contingent on the states' demonstrating a) the need for enhanced protection of water quality, b) the availability of sufficient local alternatives to overboard discharge (i.e. pump-outs), and c) local stakeholder support. DEQ is seeking this designation as one component of a clean-up plan for small tidal Chesapeake Bay tributaries. These small tributaries are frequently impaired for shellfish harvest due to elevated levels of fecal bacteria. NDZs will also prevent the direct discharge of nutrients from boats to these creeks that will help Virginia reach the goals in the Chesapeake Bay total maximum daily load for nutrient reduction. DEQ has conducted an analysis of boat traffic and pump-out availability in Farnham and Lancaster Creeks, and concluded that existing pump-out facilities are adequate to service estimated peak-season demand. A revised draft application for the NDZ designation has been prepared and is available for public review and comment.

Stream Name	County	Area proposed for NDZ
Farnham Creek	Richmond	All contiguous waters upstream of its mouth at the Rappahannock River
Lancaster Creek	Richmond and Lancaster	All contiguous waters upstream of its mouth at the Rappahannock River

Summary of NDZ application revision: Three main revisions have been made to the draft application to include the following:

(1) Inclusion of the Lancaster County side of Lancaster Creek. Due to the difficulty in utilizing the established EPA formula to calculate service requirements for half of any given creek, the Richmond County application now incorporates all of Lancaster Creek, including the Lancaster County portion. The Lancaster County portion was excluded in the first draft of the NDZ application.

(2) Updated facility information. In section 3 of the application, the hours of operation for Whelan's Marina were changed from 24 hours per weekend to 5 hours per weekend in order to reflect the information provided in writing by Whelan's Marina. Also, Garrett's Marina, located on the Essex County side of the Rappahannock River, was included as an alternative marina located within a reasonable distance from the proposed NDZ. This addition is for informational purposes only and Garrett's services are not included in the calculations of the EPA formula in section 7 of the application.

(3) Updated number of vessels and estimated number of facilities needed (sections 3.3 and 7 of the application). In the interest of obtaining a conservative estimate of the number of facilities needed to provide pumpout and dump-station services for every potential vessel in the proposed NDZ, the formula now uses the combined totals from marina surveys (i.e., field data) and numbers from the U.S. Coast Guard. Also, because all of Lancaster Creek is now part of the application (including the Lancaster County portion), a proportional number of boats from Lancaster County was added to Richmond County's total vessels, based on the number of E911 structures that are part of Lancaster Creek's watershed on the Lancaster County side of the creek.

The revised draft NDZ application for Farnham and Lancaster Creeks is available for review at: http://www.deq.virginia.gov/tmdl/ndz.html

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on February 16, 2011.

Contact for additional information/submit comments to: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Total Maximum Daily Load for Segments of Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terry's Run, and Plentiful Creek in Spotsylvania County

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on a 7.33 mile stream segment of Goldmine Creek in Louisa County; a 2.51 mile segment of Beaver Creek, a 2.52 mile segment of Mountain Run, a 12.15 mile segment of Pamunkey Creek, a 3.12 mile

segment of Terry's Run in Orange County, and a 3.12 mile segment of Plentiful Creek in Spotsylvania County. The TMDLs for these stream impairments were completed in August 2005 and can be found in the bacteria TMDLs for York River Basin Orange, Louisa, Spotsylvania Counties, Virginia study report on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/rapprvr/urappaec.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The first public meetings to discuss the development of the IP for the bacteria TMDLs will be held on Tuesday, January 25, 2011, at 6:30 p.m. at the Louisa County Administration Building, 1 Woolfolk Avenue, Louisa, VA, and Wednesday, January 26, 2011, at 6:30 p.m. at the Town of Orange Public Works Community Room, 235 Warren Street, Orange, VA. At these meetings, the implementation plan development process will be discussed and citizens will learn how they can be part of the public participation process. The agenda and presentations will be the same for both meetings.

The 30-day public comment period on the information presented at the meetings will end on February 28, 2011. A fact sheet on the development of an IP for Goldmine Creek, Beaver Creek, Mountain Run, Pamunkey Creek, Terry's Run, and Plentiful Creek is available upon request. Questions or information requests should be addressed to May Sligh with DCR. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to May Sligh, Department of Conservation and Recreation, email address: may.sligh@dcr.virginia.gov, telephone (804) 443-1494.

Total Maximum Daily Load for Kings Creek Watershed

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation (DCR), and Northampton County invite citizens to a public meeting to discuss the development of an implementation plan (IP) to address fecal bacteria impairments in the Kings Creek Watershed. Water quality monitoring indicates that bacteria levels in Kings Creek violate Virginia's water quality standards for shellfish propagation. A total maximum daily load (TMDL) study for the impairments was approved by EPA in 2007 and is available on DEQ's website at: http://www.deq.virginia.gov/tmdl/apptmdls/shellfish/cherryst.pdf.

The IP will identify ways to meet the pollutant reductions outlined in the TMDL study. The final public meeting to review the draft TMDL implementation plan will be held in the auditorium of the former Northampton Middle School on Wednesday, January 26, 2011, at 7 p.m., Northampton County Middle School, 7247 Young Street, Machipongo, VA.

The purpose of the meeting is to discuss the proposed management actions to reduce bacteria concentrations in the affected watershed and to solicit public comment on the draft IP. The IP includes the corrective actions needed to reduce bacteria and the associated costs, benefits, and environmental impacts. The IP also provides measurable goals and a timeline of expected achievement of water quality objectives. A copy of the draft IP will be available on the DEQ website by January 26, 2011, at: http://www.deq.virginia.gov/tmdl/iprpts.html.

How to comment: The public comment period on the development of the IP will end on February 28, 2011. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Todd Herbert or Jennifer Howell. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Todd Herbert, Department of Conservation and Recreation, 1548-A Holland Road, Suffolk, VA 23434, telephone (757) 925-2319, FAX (757) 925-2388, or email todd.herbert@dcr.virginia.gov or to Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23262, telephone (757) 518-2111, FAX (757) 518-2003, or email jshowell@deq.virginia.gov.

VIRGINIA DEPARTMENT OF HEALTH

Drinking Water Construction

The Virginia Department of Health (VDH) will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. Attendees will be asked for specific suggestions and opinions.

Attendees will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

To attend, please return the form below by February 18, 2011, so VDH may properly plan the meeting. Mail the application to Theresa Hewlett at the Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219 or fax it to (804) 864-7521. Questions should be directed to Theresa Hewlett at (804) 864-7501.

January 10, 2011

Drinking Water Construction Funding Meetings

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 18, 2011 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or fax at 804/864-7521. If you have any questions, please call Theresa Hewlett at 804/864-7501.

I (we) wish to attend the meeting indicated below: NOTE THAT THE CULPEPER WORKSHOP IS IN THE AFTERNOON!!

☐	Danville	9:00 a.m.-12:00 p.m., Wednesday, February 16, 2011 at the Pittsylvania/Danville Health District's Library, 326 Taylor Drive, 2nd Floor, Danville, VA.
☐	Abingdon	9:00 a.m.–12:00 p.m., Thursday, February 17, 2011 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA
☐	Lexington	9:00 a.m.-12:00 p.m., Friday, February 18, 2011 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA
☐	Suffolk Area	9:00 a.m.-12:00 p.m., Wednesday, February 23, 2011 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
☐	Culpeper	1:00 p.m.-4:00 p.m., Thursday, February 24, 2011 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA
☐	Chesterfield	9:00 a.m.-12:00 p.m., Friday, February 25, 2011 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA.

There will be _____ persons in my party as follows:

Name	Address	Phone	Representing

Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) is pleased to announce several opportunities for drinking water funding. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in the following cycle. As described below, funding is made possible by our Drinking Water State Revolving Fund (DWSRF) Program. VDH anticipates a funding level of $23 million. Also, the enclosed attachment describes our Water Supply Assistance Grant Fund Program. Limited funds will be available under this program. Our FY 2012 DWSRF Intended Use Plan will be developed using the public's input on these issues.

(1) 1452(k) Source Water Protection Initiatives (5 pages). Must be postmarked by April 1, 2011. This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (1) community and nonprofit noncommunity waterworks to acquire land/conservation easements and (2) community waterworks, only, to establish local, voluntary incentive-based protection measures.

(2) Construction Funds (10 pages). Must be postmarked by April 1, 2011. Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A preliminary engineering report must be submitted if required by VDH. An instruction packet and construction project schedule are included.

(3) Set-Aside Suggestion Forms (2 pages). Must be postmarked by April 1, 2011. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(4) Planning & Design Grants (9 pages). Must be postmarked by August 26, 2011. Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to $30,000 per project for small, financially stressed, community waterworks serving fewer than 3,300 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's Program Design Manual describes the features of the above opportunities for funding. After receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed in August, the draft Intended Use Plan will describe specific details for use of the funds. A public meeting is planned for October and written comments will be accepted before a final version is submitted to the Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, Program Design Manuals and information may be requested from Steve Pellei, P.E., FCAP Director, telephone (804) 864-7500, FAX (804) 864-7521, or in writing to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Any comments can be directed to Mr. Pellei. The materials are also accessible on VDH's website at http://www.vdh.virginia.gov/drinkingwater/financial.

Water Supply Assistance Grant Funding

The 1999 General Assembly created the Water Supply Assistance Grant Fund (WSAGF) in § 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water. The Virginia Department of Health (VDH) does not anticipate WSAG funds being made available at the present time. If funds are made available after the solicitation for grant funding, VDH with implement the following WSAG requirements.

Funds are available by submitting an application postmarked on or before the dates indicated for the following:

(1) Planning Grants – Application must be postmarked by August 26, 2011. Funding for waterworks planning needs. The application cannot exceed $60,000.

In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF funding purposes only, up to 50 extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include but not be limited to: capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

(2) Surface Water Development or Improvement Grants – Application must be postmarked by April 1, 2011. Funding for community waterworks surface source water development

or improvement activities. The application cannot exceed $200,000.

The applicant submits the current VDH construction application to VDH. In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support.

Eligible activities may include: land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Small Project Construction Grants – Application must be postmarked by April 1, 2011. Funding for small project construction that is defined as a project whose total project cost does not exceed $50,000. Eligible activities may include but not be limited to: upgrade or construction of well or spring sources, waterlines, or storage tanks; and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF purposes only, up to 30 extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/SDWA compliance projects are funded before any other eligible project.

The VDH's WSAGF Program Guidelines describes the features of the above opportunities for funding.

Request applications or Program Guidelines by calling (804) 864-7500, FAX (804) 864-7521, or writing to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th floor, Richmond, VA 23219. The applications are also accessible on VDH's website at www.vdh.virginia.gov/drinkingwater/financial.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 20, 2010, December 28, 2010, and January 4, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Ninety-Nine (10)

Virginia's Instant Game Lottery 1215; "Lucky 8'S" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Five (10)

Virginia's Instant Game Lottery 1218; "Cruise for Cash" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Six (10)

Virginia's Instant Game Lottery 1236; "Hot $1,000" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Seven (10)

"You Activate/We Pay" Virginia Lottery Retailer Incentive Program Rules (effective December 20, 2010)

Director's Order Number One Hundred Eleven (10)

Virginia Lottery's "2011 Super Teacher Awards Contest" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Twelve (10)

Virginia's Instant Game Lottery 1222; "Fat Cat Returns!" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Thirteen (10)

Virginia's Instant Game Lottery 1223; "Lucky Bucks Doubler" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Fourteen (10)

Virginia's Instant Game Lottery 1230; "Casino Riches" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Fifteen (10)

Virginia's Instant Game Lottery 1244; "Aces & 8'S" Final Rules for Game Operation (effective December 20, 2010)

Director's Order Number One Hundred Sixteen (10)

Virginia's Instant Game Lottery 1245; "Truckin' For Cash" Final Rules for Game Operation (effective January 3, 2011)

Director's Order Number One Hundred Seventeen (10)

Virginia Lottery's "Winner Wednesdays Sweepstakes" Final Rules for Game Operation (effective December 22, 2010)

STATE WATER CONTROL BOARD

Notice of Intent to Provide § 401 Water Quality Certification of Norfolk District Army Corps of Engineers Regional Permit

Pursuant to Virginia Water Protection Permit Regulation (9VAC25-210-130 H), the State Water Control Board (board) is giving notice of its intent to provide § 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District Regional Permit after considering public comment for a 30-day period starting January 4, 2011.

The Regional Permit 5 (RP-5) was last issued on January 20, 2006, with an expiration date of January 31, 2011.

On December 6, 2010, the USACE Norfolk District published a notice of proposed reissuance and modification of the Norfolk District RP-5. The notice can be found at: http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/PN/11_ RP_05/11-RP-05_PN_06DEC11.pdf

The board hereby proposes unconditional § 401 Water Quality Certification for the RP-5 provided language is added to the permit to clarify that authorizations under the RP-5 do not obviate the need to get a Virginia Water Protection Program (VWPP) permit for water withdrawals from the impoundment.

Some activities covered by the RP-5 are already excluded from VWPP regulations and many other activities with smaller impacts are covered by reporting only provisions in VWPP General Permits. Therefore, DEQ has determined that it would be redundant to require an additional permit for construction of small impoundments that do not involve water withdrawal.

The board can only issue final § 401 certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWPP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The board will issue its final § 401 Water Quality Certification for activities authorized by the above referenced USACE Norfolk District permits at the end of the 30-day comment period and after any comments received are considered. Written comments, including those by email, must be received no later than 5 p.m. on January 27, 2011, and should be submitted to David L. Davis at the address below. Only those comments received within this period will be considered by the board. Written 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.

DEQ's Office of Environmental Impact Review (OEIR) posted a public notice regarding the proposed USACE permit revisions. Comments are being received by the OEIR until January 7, 2011, pursuant to the federal consistency requirements under the U.S. Coastal Zone Management Act.

Contact Information: David L. Davis, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4347, or email dave.davis@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

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

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions, and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track, and emergency regulatory packages.

ERRATA

STATE BOARD OF ELECTIONS

Title of Regulation: **1VAC20-80. Recounts and Contested Elections (adding 1VAC20-80-10, 1VAC20-80-20).**

Publication: 27:9 VA.R. 770-771 January 3, 2011.

Correction to Proposed Regulation:

Add "Public Hearing Information: January 31, 2011 – 1 p.m. – State Board of Elections, Washington Building, Basement Level, Room B27, Richmond, VA"

VA.R. Doc. No. R11-2444, Filed December 28, 2010

DEPARMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10).**

12VAC30-110. Eligiblity and Appeals (amending 12VAC30-110-1300).

Publication: 27:9 VA.R. 800-804 January 3, 2011.

Correction to Final Regulation:

Page 800, Effective Date, change "February 2, 2011" to "February 17, 2011"

Page 800, Titles of Regulations, remove 12VAC30-110-1350.

VA.R. Doc. No. R11-2263, Filed January 5, 2011